200541050

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 22 2005

U.I.L. 408.03-00

T:EP:RA:VK

****
****
****
****

Legend:

Taxpayer A	=	********************
Taxpayer B	=	********************
IRA X	=	********************
Amount D	=	********************
Company B	=	********************
Account F	=	********************
Bank J	=	********************
Individual M	=	********************
Account G	=	********************
Company K	=	********************

Dear *************************:

This is in response to a request dated January 3, 2005, as supplemented by correspondence dated February 9, 2005, and May 18, 2005, submitted on your behalf by your authorized representative for a letter ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A, a retired individual, maintained an individual retirement arrangement, IRA X, with Company B. In 2004, Taxpayer A states that he and Taxpayer B, his spouse, purchased a new residence prior to the sale of their former home. Prior to purchasing his new residence, Taxpayer A states that he met with Individual M, his investment advisor at Company B, to discuss borrowing money from IRA X to use towards the purchase. Taxpayer A states that he was informed by Individual M that he could withdraw money from IRA X without tax consequences as long as he redeposited the money by the end of the year. An account statement submitted by Taxpayer A shows that a distribution in the amount of Amount D was made from IRA X on September 13, 2004. Documentation submitted by Taxpayer A also shows that Amount D was deposited into Account F on September 14, 2004. Account F is a joint checking account maintained by Taxpayer A and Taxpayer B at Bank J. Taxpayer A and Taxpayer B purchased their new residence on September 15, 2004 and applied Amount D towards the purchase of that property.

Taxpayer A states that on or about December 1, 2004, he asked Individual M about paying interest on the amount he withdrew from IRA X and was informed by Individual M that he misinformed him with respect to an individual being allowed to borrow money from an IRA and also the time period in which funds could be redeposited into an IRA without adverse tax consequences. Individual M has represented that he told Taxpayer A that he could withdraw money from IRA X and redeposit it within 90 days.

Documentation submitted by Taxpayer A shows that his former residence sold on January 24, 2005, and the proceeds from this sale were deposited into Account F. Taxpayer A subsequently transferred some of the proceeds to Account G, a non-tax deferred investment account he maintains with Company K. Taxpayer A states that he was given the wrong information by Individual M and because of this he should be allowed to redeposit Amount D into an IRA.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)93)(A)(i) from and IRA, which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Documentation submitted in this case indicates that a distribution in the amount of Amount D was made from IRA X on September 13, 2004 and deposited into Taxpayer A's checking account the next day. Documentation submitted by Taxpayer A also shows that he and Taxpayer B purchased their new residence on September 15, 2004, and that Amount D was applied towards the purchase of that residence. The 60-day rollover period with respect to the distribution of Amount D from IRA X ended on or about November 12, 2004.

Based on documentation submitted with this case, Taxpayer A did not have the funds to put back into IRA X or another IRA when the 60-day rollover period expired (November 12, 2004), nor by the time period provided by Individual M (90 days from the date of the distribution), since he did not sell his former residence until January 25, 2005, as date which is subsequent to both the 60-day rollover period and the time period provided by Individual M.

Taxpayer A withdrew money from IRA X and used it to purchase a new home which he purchased prior to the sale of his former home. Taxpayer A is not a first time home buyer and the extended rollover period under Code section 72(t)(8)(A) does not apply to Taxpayer A even if the amount withdrawn was within the dollar limits under Code section 72(t)(8)(B). Taxpayer A's use of Amount D as part of the money needed to purchase his new residence constituted using Amount D as a short term loan. The Committee Reports describing the legislative intent indicates that Congress enacted the rollover provisions to allow portability between eligible retirement plans, including IRAs. Using a distribution from an IRA as a short term loan is not consistent with the intent of Congress to allow portability between eligible retirement plans. Since Amount D was used for purposes other than a rollover as described in Code section 408(d)(3), the request to waive the 60-day rollover requirement with respect to Amount D is denied.

Under the circumstances presented in this case, the failure to waive the 60-day rollover requirement would not be against equity or good conscience. Therefore, with respect to your ruling request, we conclude that, pursuant to Code section 408(d)(3)(I), the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X, and that Amount D will not be considered a valid rollover contribution under Code section 408(d)(3) because of the 60-day requirement was not satisfied.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions concerning this letter, please contact *****************************SE:T:EP:RA:T2.

Sincerely yours,

[redacted]

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose