INTERNAL REVENUE SERVICE

200608035

DEC - 1 2005

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =

IRA X =

Amount A =

Company A =

Dear [redacted]

This is in response to your request dated July 20, 2005, in which you request a waiver of 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 penalty of perjury in support of the ruling requested

Taxpayer A represents that he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a first–time home purchase of a residence.

Taxpayer A, a first-time home buyer, received a distribution from IRA X on December 22, 2004, in Amount A which he intended to use to purchase a condominium to be his principal place of residence. Because of difficulties and delays caused by the mismanagement of the mortgage provider, Company A, Taxpayer A cancelled the purchase contract. However, as a result of the delays caused by Company A, Taxpayer A was not able to return Amount A to IRA X until March 11, 2005, 19 days after the expiration of the 60-day rollover period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount A contained in section 408(d)(3) of the Code in this instance.

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 60^{th} 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 60^{th} 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)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

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 the 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 occurred 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 (January 27, 2003) 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.

Section 72(t)(2)(F) of the Code provides that certain distributions for first home purchases may not be subject to the additional 10-percent tax imposed under section 72(t)(1) on early distributions if the distribution from an individual retirement plan is a qualified first-time homebuyer distribution as that term is described in sections 72(t)(8)(A),(B),(C), (D), or (E).

Section 72(t)(8)(A) provides, in general, that a "qualified first-time homebuyer distribution " means any distribution received by an individual to acquire a principal residence before the close of the 120th day after the day on which such payment or distribution is received.

Section 72(t)(8)(E) of the Code provides a special rule where a failure to meet the 60-day rollover requirements of section 408(d)(3)(A) of the Code is due solely by reason of a delay in acquisition, or cancellation of the purchase or construction of the residence, the amount of the distribution from an individual retirement account may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) by substituting "120th day" for "60th day" in section 408(d)(3)(A)(i).

The information presented by you indicates that you withdrew the funds from IRA X, in order to purchase a home. After the collapse of the real estate negotiations your contract was cancelled and you then re-deposited Amount A into IRA X within approximately 79 days after the initial distribution from IRA X.

As noted above, Code § 72(t)(8)(E) provides that the general 60-day rollover period applicable to distributions received from IRAs is extended to 120 days with respect to a distribution received from an IRA for the purpose of purchasing a home if the purchase is not consummated and if the "purchaser" qualifies as a first time homeowner. In this case, Taxpayer A has asserted that he has never been a homeowner and that he withdrew funds from his IRA to become a first-time homeowner. His purchase contract was cancelled and approximately 79 days after he received his IRA distribution he contributed the amount of his IRA distribution into an IRA. Pursuant to Code § 72(t)(8)(E), Taxpayer A's March 11, 2005, IRA contribution was timely.

Therefore, the Service concludes that the relief requested under section 408(d)(3)(I) of the Code and Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) is not necessary because the facts in this case indicate that your contribution to IRA X on March 11, 2005, was before the expiration of the 120 day period permitted under section 408(d)(3)(A)(i) (as extended by section 72(t)(8)(E)).

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

If you wish to inquire about this ruling, please contact [redacted] I.D. # [redacted] at [redacted]. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

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