200729038

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 23 2007

Uniform Issue List: 408.03-00

SE:T:EP:RA:T

Legend:

Taxpayer A=

Amount B =

Amount C =

IRA D=

IRA E =

Date L =

Date M =

Date P =

Date O =

Date Q =

Dear:

This is in response to your letter dated , as supplemented by additional correspondence dated , 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, age , represents that she received a distribution of Amount B and Amount C from IRAs D and E, respectively, to pay acquisition costs for the purchase of a

Taxpayer A, age , represents that she received a distribution of Amount B and Amount C from IRAs D and E, respectively, to pay acquisition costs for the purchase of a residence. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to financial advisor error.

On Date L Taxpayer A withdrew Amount B from IRA D and Amount C from IRA E to pay the acquisition costs with respect to the purchase of a residence as a first-time homebuyer. On Date M Taxpayer A deposited Amounts B and C in an escrow account with the seller's attorney, along with the purchase contract and other documents required for the purchase of a residence. On Date P, Taxpayer A received notice that her application to purchase the property was denied. However, Amounts B and C were not returned to her until Date 0, which was beyond the 60 day rollover period. The Internal Revenue Service received Taxpayer A's request for a waiver of the rollover period on Date Q. Taxpayer A represents that Amounts B and C have not been used for any other purpose.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount B and Amount C.

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 72(t)(8)(E) of the Code provides a special rule where there has been a delay in an acquisition for qualified first-time homebuyers. If any distribution from any individual retirement plan fails to meet the requirements of section 72(t)(8)(A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount distributed may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting "120th day" for "60th day in such section.

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, 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.

The information presented by Taxpayer A demonstrates that she took a distribution from IRA D and IRA E in order to cover a portion of the acquisition costs associated with the purchase of a principal residence as a first time homebuyer. Taxpayer A intended to redeposit Amounts B and C into IRAs D and E once her acquisition application had been denied. However, the 60-day rollover period had expired by the time the funds were returned to her. Taxpayer A was advised by her financial consultant that banks could not accept funds back into an IRA after the expiration of the 60-day rollover period and that she would have to request a waiver from the Internal Revenue Service in order to put the money back into her IRAs. The IRS received Taxpayer A's rollover waiver request on Date Q, which was within the extended rollover period for first time homebuyers, however, the Service did not start to process Taxpayer A's request until after the extended rollover period had expired.

Therefore, pursuant to sections 408(d)(3)(I) and 72(t)(8)(E) of the Code, the Service hereby waives the 120-day rollover requirement with respect to the distribution of Amounts B and C from IRAs D and E. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into a Roth IRA and Amount C into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

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 . Please address all correspondence to SE:T:EP:RA:T.

Sincerely yours,

/s/ Alan Perry

for Donzell Littlejohn, Manager
Employee Plans Technical Group 4

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