200436018

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

JUN - 8 2004

Legend:

Taxpayer A =

Company M =

IRA X =

Amount D =

Dear

This is in response to your letter dated December 22, 2003, as supplemented by correspondence dated February 9, 2004, March 9, 2004 and March 31, 2004, in which you request a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

Taxpayer A lost his job in In order to meet increasing financial obligations, Taxpayer A, on , withdrew Amount D from IRA X he maintained with Company M. Simultaneously with the withdrawal, Taxpayer A applied for a home mortgage loan intending to repay the distribution from IRA X, but his application for such a loan was not approved within 60 days of the receipt of the distribution of Amount D from IRA X. Taxpayer A subsequently applied for and received another mortgage loan in , and wants to use some of the proceeds of that loan to redeposit Amount D back into IRA X. Company M refused to redeposit Amount D into IRA X because the 60-day rollover period had expired.

Based on the above 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 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 property 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 includable 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 includable 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 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.

From the facts submitted, it appears that you used Amount D as a personal loan to pay personal financial obligations. It also appears, from the facts submitted, that at the time Amount D was distributed from IRA X, you did not have the intent to rollover Amount D to another IRA. 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 to settle personal financial obligations or as a temporary personal loan is not consistent with the intent of Congress to allow portability between eligible retirement plans.

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, the request to waive the 60-day rollover period with respect to the distribution of Amount D from IRA X is denied, and Amount D will not be considered a valid rollover contribution under Code section 408(d)(3) because 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.

If you have any questions about this ruling, please contact
SE:T:EP:RA:T2,

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this ruling
Notice of Intention to Disclose