



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200422053

Index No.: 408.03-00

Legend:

Taxpayer A =

Amount B =

IRA X =

Bank C =

MAR 4 2004

Dear

This is in response to a request dated May 30, 2003, as supplemented by correspondence dated October 9, 2003 and November 26, 2003, 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 ("Code").

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

Taxpayer A was unemployed during the winter of 2001-02 and was unable to make payments on his house. In January 2002, Taxpayer A received a notice of foreclosure on his home. Taxpayer A also lost his automobile to repossession because of his failure to make payments. Taxpayer A's total wages in 2002 were \$

Taxpayer A applied for a loan at several places but was turned down. As a result, on March 8, 2002, Taxpayer A withdrew Amount B from IRA X he maintained with Bank C. Taxpayer A used Amount B to pay his loan to stop the foreclosure of his house.

Subsequent to using Amount B to pay the loan on his home, Taxpayer A again applied for a loan at numerous mortgage companies but was turned down.

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Taxpayer A then approached his mother and asked her to apply for a loan on her home. Taxpayer A's mother's application for a loan was approved. Taxpayer A got money from his mother and deposited Amount B back into IRA X on June 18, 2002. Amount B was out of IRA X for a total of 102 days.

On November 20, 2003, a telephone conference was held pursuant to section 12.02 of Revenue Procedure 2004-4, 2004-1 I.R.B. 125, during which your authorized representative stated that Amount B was distributed from Taxpayer A's IRA X and not from a Code section 401(k) arrangement, as stated in his initial request for a ruling dated May 30, 2003.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount B from IRA X because the failure to waive such requirement would be against equity or good conscience.

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 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)).

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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)(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 B as a personal loan to pay off a personal debt. It also appears, from the facts submitted, that at time Amount B was distributed from IRA X, you did not have the intent to rollover the distribution 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 to settle personal debt is not consistent with the intent of Congress to allow portability between eligible retirement plans. Since Amount B was used for purposes other than a rollover as described in Code section 408(d)(3), the request to waive the 60-day rollover period with respect to the distribution of Amount B 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 B from IRA X, and that Amount B will not be considered a valid rollover contribution under Code section 408(d)(3) because of the 60-day requirement was not satisfied.

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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 please contact

Sincerely yours,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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Notice of Intention to Disclose, Notice 437