TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200423033

MAR 09 2004

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =

City E =

State F =

Amount D =

IRA X =

Dear

This is in response to your letter dated November 5, 2003, as supplemented by correspondence received by the Internal Revenue Service on February 17, 2004, 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 maintains IRA X, which is a qualified individual retirement arrangement (IRA).

Taxpayer A, who is represented to be an individual who has never been the owner of a home (including, but not limited to, a detached unit and a condominium unit), withdrew Amount D from IRA X on , to purchase a home. Prior to Taxpayer A had entered into a Regional Sales Contract to purchase real estate located in City E, State F. If the contract had been consummated , Taxpayer A would have been a first-time homebuyer.

The purchase failed when the seller eventually rejected Taxpayer A's offer. Taxpayer A redeposited Amount D into IRA X on , which date was approximately 72 days after the date of his withdrawal from IRA X.

In September 2003 the Internal Revenue Service (Service) notified Taxpayer A that he owed additional taxes due to the IRA withdrawal.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be contrary to the Internal Revenue Code based on the facts in this case.

Code section 408(a) sets down, in general, the rules governing IRAs.

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)(3)(A)(I) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Code section 408(d)(3)(E) provides that paragraph 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6).

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.

Revenue Procedure 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)(1) of the Code provides, in short, for the imposition of an additional 10 percent income tax on the taxable portion of a distribution received from a qualified retirement plan (including an IRA) prior to the date the employee/IRA holder attains age 59 ½.

Section 72(t)(2)(F) of the Code provides that certain distributions from IRAs for first home purchases may not be subject to the 10 percent additional income tax 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 defined section 72(t)(8).

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

Section 72(t)(8)(E) of the Code provides a special rule where a failure to meet the requirements of subparagraph (A) of section 72(t)(8) is due solely to a delay in acquisition, or cancellation of the purchase or construction of the residence. In such case, the amount of a 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 such section.

The information presented by you indicates that you withdrew the funds from IRA X in order to purchase a home. If the purchase had been consummated, you would have been a first-time homeowner. After the collapse of the real estate negotiations your contract was cancelled and you then re-deposited Amount D into IRA X approximately 72 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 72 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 IRA contribution was timely.

Therefore, the Service concludes that the relief requested under § 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 July 26, 2002, 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
at lease 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 ruling letter
Notice of Intention to Disclose