200544022

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 10 2005

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =
Amount D =
Broker B =
Mortgage Company A =
IRA X =
State F =

Dear [redacted]:

In letters dated September 16, 2004, and December 23, 2004, you requested 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:

On July 22, 2004, Taxpayer A, through Broker B, withdrew Amount D from IRA X, an individual retirement account described in Code section 408(a), which was then used for the purchase of his new home in State F. Taxpayer A informed Broker B that it was his intent to redeposit Amount D into an IRA within 60 days of the withdrawal using funds he would receive from closing an equity loan on his new home in State F. On or about July 29, 2004, Taxpayer A completed the paperwork necessary to apply for a home equity line of credit at Mortgage Company A on his new home. Subsequently, a hurricane devastated the city where his new home is located and severely damaged Taxpayer A's new home. As a result Taxpayer A's home was declared uninhabitable and Mortgage Company A, which was processing Taxpayer A's request for a home equity line of credit, was unable to complete the loan process. Taxpayer A did not receive the proceeds of his home equity line of credit until April 13, 2005.

On September 10, 2004, the Internal Revenue Service issued a News Release, IR-2004-115, in which it announced special tax relief for [redacted] taxpayers in the Presidential Disaster Area that was struck by Hurricane Frances on September 3, 2004

(FEMA-1545-DR). The special relief gave affected taxpayers until December 30, 2004, to perform certain time-sensitive actions described in Treasury Regulation 301.7508A-1(c)(1) which includes the making of a rollover under section 408(d)(3). Taxpayer A was an affected taxpayer located in the Presidential Disaster Area and accordingly had until December 30, 2004, to complete the rollover. As set forth above, Taxpayer A did not receive the proceeds of his home equity line of credit until April 13, 2005.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and 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 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)(l) 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.

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.

The information presented by Taxpayer A indicates that Taxpayer A took a distribution in order to purchase a house in State F. Taxpayer A intended to redeposit Amount D using the proceeds from an equity loan on his new house.

It appears from the facts that Taxpayer A used his IRA distribution in a transaction that in essence, amounts to a short-term interest free loan. The Committee Report describing legislative intent indicates that Congress enacted the rollover provisions to allow portability between eligible plans including IRAs. In general using a distribution as a short term loan to cover personal expenses is not consistent with the intent of Congress to allow portability between eligible plans and under those circumstances, the failure to waive the 60-day requirement would not be against equity or good conscience where a taxpayer is not able to redeposit the funds within the 60-day period.

Thus, the Service will not grant any extension to the 60-day rollover period of Code section 408(d)(3)(A)(1), as extended by appropriate Presidential Disaster Relief provisions in this case.

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