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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

AUG - 2 2005

Uniform Issue List: 408.03-00

*T:EP:RA:T3*

Legend:

Taxpayer A =  
Amount D =  
Bank Account Y =  
IRA X =  
State O =

Dear [REDACTED]

In a letter dated October 9, 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:

Taxpayer A was a resident of the state of Florida. On July 16, 2004, Taxpayer A withdrew Amount D from his rollover individual retirement account, IRA X and deposited the funds into Bank Account Y, a non-IRA account in order to provide sufficient proof of assets and to pay certain closing costs in conjunction with his proposed purchase of a house in State O.

While Taxpayer A was in the process of purchasing a home in State O, he was also in the process of selling his residence in Florida. This home sale was scheduled to close no later than September 7, 2004, which date was within the 60-day rollover period. Taxpayer A intended to return Amount D to IRA X upon receiving the proceeds from the sale of his Florida residence.

Damage to Taxpayer A's Florida residence resulting from a series of hurricanes that swept through Florida during the months of August and September, 2004, delayed both the closing process and the buyer's bank's release of funds to Taxpayer A. As a result, Taxpayer A did not return Amount D to his IRA X within the 60-day rollover period.

Shortly thereafter when Taxpayer A attempted to repay Amount D into IRA X, the IRA provider refused the redeposit and informed Taxpayer A to first seek a letter from the IRS which Taxpayer A did on October 9, 2004.

On September 10, 2004, the Internal Revenue Service issued a News Release, IR-2004-115, in which it announced special tax relief for Florida 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. Neither the IRA provider nor Taxpayer A was aware of this relief.

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)(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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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 indicates that Taxpayer A took a distribution in order to provide sufficient proof of assets and to pay certain closing costs in conjunction with his proposed purchase of a house in State O. Taxpayer A intended to redeposit Amount D using funds received from the proceeds from the sale of his Florida residence. It appears from the facts that Taxpayer A used the 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 taxpayer was not able to redeposit the funds within the 60-day period.

However, in this case, Taxpayer A had the funds available to make a rollover contribution during the extension period granted by News Release IR-2004-115 to affected taxpayers in the Presidentially Declared Disaster Areas. However both

Taxpayer A and his IRA provider were unaware of the availability of the extension period and Taxpayer A failed to contribute the funds during the extension period.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount D. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount D, except as noted below, to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

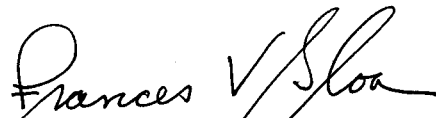
Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of any amounts required to be distributed under Code sections 401(a)(9) and 408(a)(6), if any.

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 [REDACTED] I.D. # [REDACTED]  
[REDACTED] at [REDACTED] Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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