

200430035

Uniform Issue List: 408.03-00

APR 30 2004

Legend:

Taxpayer A=

Amount B=

IRA C=

Amount D=

Bank E=

City L=

State M=

Association N=

Dear Taxpayer A:

This is in response to a request submitted on your behalf by your authorized representative by letter dated _____, for 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 to support the ruling request:

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You have been receiving Amount D in equal distributions from IRA C since Between and you purchased five condominium units for investment properties/rentals and one as your second home in City L in State M.

Around , you and all the other owners received a letter from Association N indicating that the Association N's Covenants, Conditions and Restrictions (CC&Rs) passed in were in violation of the zoning code of City L. The violation resulted in City L requesting that the number of tenants in the dwellings units had to be decreased by one half in order to meet the zoning ordinance requirements of City L. This request created a substantial financial burden on some of the owners of the rental units. Association N and City L could not reach a satisfactory compromise on the violation. Therefore, the number of tenants had to be reduced by one half in order to comply with City L's zoning code. Faced with large expenses and lower than estimated income, you decided that withdrawing Amount B from IRA C in order to pay down a portion of the mortgage while also trying to sell the units, was the best solution.

You called your stockbroker and requested that Amount B be withdrawn from IRA C to pay the outstanding mortgages and then re-negotiate the mortgages with the lender. Later, your accountant advised you not to request the distributions because of the adverse tax consequences. You then called the broker and tried to stop the distribution requested, but the request was already being processed. You received a check for Amount B on , and deposited it in Bank E on . Since the distribution was not rolled over within the statutory 60-day period, Amount B became a taxable distribution.

You represent that no other amount was distributed from IRA C within the one year period since the original distribution.

You request a waiver of the 60-day rollover limitation under section 408(d)(3) of the Code in order to allow you to repay Amount B back into IRA C.

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.

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; 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.

It appears from the information submitted that you intended to use the funds from your IRA distribution to help pay off some of your outstanding mortgages and

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then to re-negotiate with the lender the existing mortgages in order to obtain lower mortgage payments. Soon after you received Amount B, you deposited the entire Amount B into Bank E where it has been ever since. Thereafter, you planned to make a re-deposit of Amount B into IRA C within the statutory rollover period of 60-day. You understood that you were still entitled to rollover Amount B into IRA C since you were still within the 60-day rollover period. However, when you attempted to do the rollover, you were incorrectly informed by the stockbroker that you could not do it because the 60-day rollover period had already expired. You relied entirely on the stockbroker information regarding the IRA C distribution. Your trust in the distribution advice from a professional broker and their errors prevented you from timely redepositing Amount B into IRA C and it was beyond your reasonable control.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into IRA C. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

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.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions please contact _____, at
_____. Please address all correspondence to _____.

Sincerely yours,

Ada Perry
for

_____, Manager
Employee Plans Technical Group 4

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Enclosures:

Deleted copy of this letter

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