INTERNAL REVENUE SERVICE

20060Y022

**Uniform Issue List: 408.03-00**

DEC - 8 2005

SE:T:EP:RA:T3

Legend:

Taxpayer A =

State A =

State B =

Amount A =

Dear [redacted]

This is in response to your request dated March 1, 2005, as supplemened by correspondence dated July 27, 2005, 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Taxpayer A represents that he received a distribution from his IRA totaling Amount A. The IRA funds were withdrawn in order to purchase real estate in State B. axpayer A asserts that his failure to accomplish a repayment of this IRA distribution within the 60-day period prescribed by section 408(d)(3) was due to delays in the sale of his house in State A, his state of residence, as a result of a prospective purchaser of his house reneging on the purchase, and of several hurricanes then striking State A which delayed his obtaining a new buyer. The IRA funds were withdrawn in order to purchase real estate in State B. Amount A was withdrawn on [redacted], and replacement funds were not available until [redacted].

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount A contained in section 408(d)(3) of the Code in this instance.

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 $60^{th}$ 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 $60^{th}$ 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 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.

Rev. Proc. 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 received a distribution from his IRA in order to purchase a house. It appears from the facts that Taxpayer A used his IRA distribution in a transaction that in essence, amounted 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 from an IRA 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 or did not 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) 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