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

200544025

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 12 2005

U.I.L. 408.03-00

SE:T:EP:RA:T2

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Legend:

Taxpayer A = **********************

Taxpayer B = **********************

IRA X = **********************

Amount D = **********************

Amount E = **********************

Company C = ***********************

Account F = ***********************

Bank K = **********************

Dear ************************:

This is in response to your undated letter which was received in this office on April 18, 2005, as supplemented by correspondence dated May 23, 2005, in which you request a ruling to waive 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 penalties of perjury in support of the ruling requested.

Taxpayer A maintains an individual retirement arrangement, IRA X, with Company C. Pursuant to the terms of the Judgment of Divorce between Taxpayer A and Taxpayer B, her former husband, Taxpayer A was ordered to pay the sum of Amount D to Taxpayer B within two years of the date of the Judgment of Divorce from the proceeds received from the sale of their marital home. Amount D represented Taxpayer B's one-half interest in the remaining marital estate. The Judgment of Divorce was obtained on or about [redacted]

Pursuant to the terms of the Judgment of Divorce, Taxpayer A was ordered to pay interest on Amount D calculated back to the date of the Judgment of Divorce if Amount D was not paid in full within the two year period. The two year period ended on or about [redacted] Taxpayer A states that she put her home on the market prior to the end of the two year period. However, since Taxpayer A had not found a buyer by the middle of [redacted] and to avoid paying interest on Amount D, she decided to withdraw Amount D from IRA X and use this amount to pay Taxpayer B. Documentation issued by Company C indicates that a check dated August 16, 2004 was issued by Company C from IRA X in the amount of Amount D. A notarized note signed by Taxpayer B indicates that on [redacted] he received a check from Taxpayer A in the amount of Amount D "per the settlement agreement".

Taxpayer A states that she sold her residence on or about October 29, 2004, for Amount E. Documentation submitted with this request shows that on November 22, 2004, a deposit in the amount of Amount E was made into Account F, a savings account Taxpayer A maintains with Bank K. The sale of the house and the deposit of the proceeds from the sale of the house occurred after the expiration of the 60-day rollover period applicable to the distribution of Amount D from IRA X.

Taxpayer A states that on or about the end of October 2004, she spoke with a representative of Company C about wiring the money back into IRA X even though at this time the 60-day rollover period had expired. Taxpayer A asserts that had she known that it would take her four months to sell her home she would have used her credit cards to put Amount D back into IRA X. Taxpayer A believes that since she could have used her credit cards to put the money back into IRA X, she had the ability to complete a rollover within the 60-day period.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

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 and IRA, which was not includible in gross income because of the application of section 408(d)(3).

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 occur 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 the 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.

Documentation submitted in this case indicates that a distribution in the amount of Amount D was made from IRA X on or about August 16, 2004. Taxpayer A stated that she withdrew Amount D from IRA X to pay an obligation she owed Taxpayer B pursuant to the terms of her divorce from Taxpayer B. Taxpayer A had to pay Amount D to Taxpayer B prior to the period ending on or about [redacted] otherwise she would have had to pay interest on this amount retroactive to the date the Judgment of Divorce was issued. Documentation submitted with this case shows that on [redacted] Taxpayer A gave Taxpayer B a check in the amount of Amount D representing the amount she was ordered to pay Taxpayer B on or before [redacted] and thus satisfied her obligation to Taxpayer B under the Judgment of Divorce.

Taxpayer A attempted to sell her home prior to the expiration of the two year period ending on or about [redacted] However, documentation submitted with this request shows that Taxpayer A did not sell her home until October 29, 2004, and did not receive the check from the sale of her home until November 22, 2004, the date Amount E was deposited into Account F, which date is subsequent to the expiration of the 60-day rollover period that expired on or about October 16, 2004.

Taxpayer A's use of Amount D to settle a personal obligation constituted using Amount D as a short term loan. The Committee Reports describing the legislative intent indicate that Congress enacted the rollover provisions to allow portability between eligible retirement plans, including IRAs. Using a distribution from an IRA as a short term loan or to settle personal obligations is not consistent with the intent of Congress to allow portability between eligible retirement plans.

Therefore, with respect to your ruling request, we conclude that, pursuant to Code section 408(d)(3)(I), the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X, and that Amount D will not be considered a valid rollover contribution under Code section 408(d)(3) because of the 60-day requirement was not satisfied.

Under Revenue Procedure 2005-4, 2005-1 I.R.B. 128, letter rulings are issued to taxpayers based on a complete statement of all the facts that relate to the transaction. Section 8.02 of that procedure provides that letter rulings will not be issued on hypothetical situations. That Taxpayer A could have exercised other options to put Amount D back into IRA X prior to the expiration of the 60-day rollover period, such as, taking a cash advance from her credit cards, is hypothetical in nature, since she did not exercise it during the 60-day rollover period. There is nothing in our letter ruling procedure that allows the Service to consider hypothetical facts when issuing letter rulings.

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.

If you have any questions concerning this letter, please contact
***************************************SE:T:EP:RA:T2.

Sincerely yours,

(Signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

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