

**200417033**

*INTERNAL REVENUE SERVICE*

*JAN 30 2004*

Uniform Issue List: 408.03-00

*T. EP. RA. T4*

Legend:

Taxpayer A=

Amount B=

IRA C=

Dear Taxpayer A:

This is in response to your letter dated March 25, 2003, 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:

From September 2001 to September 2002, you experienced a period of intermittent unemployment due to poor economic and labor conditions. You received state unemployment benefits until they ceased in June 2002. During May and August of 2002, you requested and received three partial distributions from IRA C for Amount B to defray personal expenses. You used part of Amount B to pay for educational tuition expenses. You obtained permanent employment in late 2002 and now want to redeposit Amount B in IRA C.

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

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B because the failure to waive such requirement would be 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 60<sup>th</sup> 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<sup>th</sup> 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, 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.

It appears from the information you submitted that you used the funds from your IRA distribution to pay living expenses and educational tuition. In effect, you have engaged in a transaction that amounts to a short term interest free loan. The Committee Report describing legislative intent indicate that the Congress enacted the rollover provisions to allow portability between eligible plans including IRAs. 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. The information presented does not demonstrate circumstances that would justify a waiver of the 60-day rollover period pursuant to section 408(d)(3)(I) of the Code. Under these circumstances, the failure to waive the 60-day requirement would not be against equity or good conscience.

Therefore, the Service hereby denies the request to waive the 60-day rollover requirement with respect to the distribution of Amount B.

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 taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact \_\_\_\_\_, I.D. # \_\_\_\_\_, at  
. Please address all correspondence to \_\_\_\_\_.

Sincerely yours,



, Manager  
Employee Plans Technical Group 4

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

Cc: