

200550038

SEP 19 2005

INTERNAL REVENUE SERVICE

SE.T.EP:R.A.T4

Uniform Issue List: 408.03-00

Legend:

Individual A=

Amount B=

Amount C=

Employer D=

Month E=

Month F=

Date G=

Date H=

Month K=

Bank L=

Dear :

This is in response to your letter dated January 24, , in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code (the Code).

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The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

During Month E Individual A requested and obtained from Employer D a loan for Amount B to purchase real estate. Individual A began repaying the loan every two weeks. Individual A decided to leave employment with Employer D during Month F, at which time there was an outstanding loan balance of Amount C. Individual A kept waiting for information from Employer D as to what to do regarding the outstanding loan balance. On Date H Individual A received a "Confirmation of Loan Foreclosure" letter from Employer D in which he was informed that he could make a rollover of Amount C into an Individual Retirement Account (IRA) provided that he made the rollover within 60 days from the effective date of the foreclosure notice (Date G). Individual A went to Bank L, within the 60 day rollover period, during Month K to rollover Amount C. Individual A could not timely make the rollover at that time because the loan officer would not be in the office until the following week, which was the week of the Christmas holidays. Individual A believed that the 60 day rollover period ended on January 1, , because the loan foreclosure letter was dated November 1, . Individual A returned to Bank L on December 31, , to make the rollover. The Bank L's loan officer had questions (unrelated to the 60 day rollover period) and wanted to call the plan administrator, but their office was on the East coast and already closed. Thus, Individual A was unable to make the rollover, as he intended, within the 60 day rollover period due to the delays caused by Bank L.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to Amount C.

Section 402(c)(3)(A) of the Code requires that an eligible rollover distribution from a qualified retirement plan must be transferred to an eligible retirement plan no later than the 60<sup>th</sup> day following the day of receipt in order to avoid having to include that distribution in the distributee's gross income for that year.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience.

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;

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(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 demonstrates that Individual A attempted to make a rollover of Amount C within the 60 day rollover period. However, due to the loan officer in Bank L not being available, the holidays, and the bank officer raising additional questions unrelated to the timing of the rollover, Individual A was unable to rollover Amount C within the 60 day rollover period.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60 day rollover requirement with respect to the distribution of Amount C. Provided all other requirements of section 402(c) of the Code, except the 60 day requirement, are met with respect to such contribution. The contribution of Amount C into an IRA will be considered a rollover contribution within the meaning of section 402(c) 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 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.

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

Sincerely yours,

*Alda Perry for*

, Manager

Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose