

200420034



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

FEB 18 2004

Uniform Issue List: 408.03-00

[REDACTED]

Legend:

Taxpayer A = [REDACTED]

Amount D = [REDACTED]

Bank S = [REDACTED]

Bank B = [REDACTED]

IRA X = [REDACTED]

IRA Z = [REDACTED]

Dear Ms. [REDACTED]

In a letter dated October 31, 2003, your authorized representative requested, on your behalf, 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 maintained IRA X an Individual Retirement Account (IRA) with Bank S.

In September 2002, Taxpayer A received a distribution of Amount D from IRA X. Taxpayer A attempted to roll over Amount D into an IRA at Bank B by explaining to a Bank B employee that Taxpayer A wanted Amount D to be rolled over into an IRA. However in June 2003, after an inquiry from Taxpayer A's certified public accountant, Taxpayer A was notified by Bank B that Amount D had not been rolled over into an IRA. Until that time, Taxpayer A believed she had completed a timely rollover on September 30, 2002.

Prior to June, 2003, Taxpayer A had no reason to suspect that Bank B failed to comply with her request that Amount D be placed in an IRA when she set up her Bank B account in September 2002.

Finally on October 31, 2003, Bank B established IRA Z for the benefit of Taxpayer A in Amount D. IRA Z is described in its application form as a "Traditional IRA".

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D 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 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)(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 occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 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 demonstrates a failure on the part of Bank B to follow Taxpayer A's instructions which resulted in the failure of Taxpayer A to satisfy the requirement that Amount D be deposited in an IRA within 60 days of the date Taxpayer A received the distribution from IRA X.

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 D from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of issuance of the letter to contribute Amount D into an IRA which meets the requirements of Code section 408(a). Since Taxpayer A has indicated that Amount D has been placed in IRA Z, Taxpayer A should take a copy of this letter to Bank B within the requisite 60 day period to insure that IRA Z meets the requirements of Code section 408(a). Provided all requirements, except the 60-day requirement of Code section 408(d)(3)(A), of Code section 408(d)(3) are met with respect to such contribution of Amount D to an IRA, the contribution of Amount D distributed from IRA X to IRA Z will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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 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 _____, I.D.
_____, at _____ . Please address all correspondence to

SE:T:EP:RA:T3.

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

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan". The signature is fluid and cursive, with a large initial "F" and a long horizontal stroke at the end.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose