



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

200421007

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 25 2004

Uniform Issue List: 408.03-00

[REDACTED]

SEE EP: RA: T3

Legend:

Taxpayer A = [REDACTED]

Company M = [REDACTED]

Amount B = [REDACTED]

IRA X = [REDACTED]

Dear Mr. [REDACTED]

In a letter dated November 26, 2003, you requested a ruling from the Internal Revenue Service waiving the 60-day rollover requirement found in section 408(d)(3) of the Internal Revenue Code.

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

On May 22, 2003, Taxpayer A received a distribution check in Amount B from his Individual Retirement Account (IRA), IRA X, maintained with Company M. Taxpayer A erroneously believed he had 90 days to roll over Amount B into another IRA. After 75 days he learned of his mistake when he attempted to make a rollover contribution to another IRA. Taxpayer A immediately wrote to the Internal Revenue Service to determine if there was a procedure by which the Service could grant an extension of time to establish a rollover IRA account.

Based on the 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 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)(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.

Revenue Procedure 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

[REDACTED]

by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by Taxpayer A demonstrates an error in his understanding and that Taxpayer A had every intention to rollover Amount B. Taxpayer A did not use the funds for other purposes and immediately took steps to contact the Service when he discovered his error regarding the correct rollover period.

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 B from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period not to exceed 60 days measured from the date of issuance of the letter to contribute Amount B into an IRA which 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 B to an IRA, the contribution of Amount B distributed from IRA X to an IRA 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.

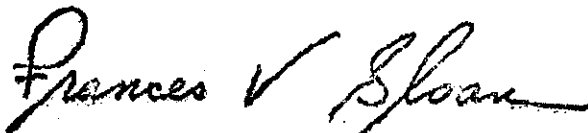
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact

at

Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose