



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200 521 034

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

MAR 04 2005

Uniform Issue List 408.00-00

Legend:

Bank A =
Company B =
Company C =
Individual D =
Account E =
Account F =
Account G =
IRA X =
Amount H =
Amount I =
Amount J =
Amount K =
Amount L =
Amount M =

Dear

This is in response to your request dated August 10, 2004, submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section

408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated October 22, 2004, and January 7, 2005, supplemented the request.

Your representative has submitted the following facts and representations:

You had maintained IRA X with Bank A. On July 11, 2003 you received a distribution of Amount K from IRA X. Within 60 days you contacted Individual D at Company B and requested that an IRA be established to receive your IRA X distribution. You deposited your IRA X distribution in three separate accounts, as follows : Amount H was deposited in Account E; Amount I was deposited in Account F; and Amount J was deposited in Account G (Amount H plus Amount I plus Amount J totaled Amount M, which approximated, but did not exceed, Amount K). At all times you believed that said amounts were deposited in an individual retirement arrangement. .

On February 20, 2004, while preparing your calendar year [REDACTED] Federal individual tax return, you discovered that Accounts E, F, and G had not been deposited into an IRA. Upon discovering this, you contacted Individual D, who acknowledged the error in a letter dated October 19, 2004, and assured you that the monies deposited in said accounts would be placed into an IRA. Account E and Account F were immediately converted to IRA accounts.

Prior to your discovery of the error, Company C, the company that managed Account G, was investigated by the Securities and Exchange Commission ("SEC") and found to be engaged in improper financial dealings. The SEC ordered Company C to cease operations, and it is now in liquidation. You later received Amount L from the receiver of Company C, and deposited that amount in a new IRA within 60 days of receipt. You wish to deposit, as a rollover contribution, in a new IRA an amount which when added to Amount L, will equal the amount originally deposited in Account G (Amount J).

A letter to your authorized representative from Company B, dated January 7, 2005, acknowledged that you made clear to Company B your intention to establish a rollover IRA, and that a trainee in one of their offices inadvertently set up non-IRA accounts.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution from IRA X (to the extent it totaled Amounts H, I, and J) because the failure to waive such requirement would be against equity or good conscience.

With respect to your ruling request, 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.

Rev. Proc. 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 facts indicate that you had the intent to transfer Amounts H, I and J (Amount M which approximated, but did not exceed Amount K) into IRAs. However, because of an error on the part of Company B, such amounts were not placed in an IRA, but were placed in nonqualified investments. Company B acknowledged the error and converted such Accounts E and F to an IRA. Furthermore, Amount L was distributed to you by the receiver of Company C which managed Account G as part of a liquidation proceeding without your seeking said distribution. Amount L had been contributed to an IRA. You wish to contribute an additional amount to an IRA so that the sum placed into IRAs set up and maintained in your name will equal Amount M.

Accordingly, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amounts H, I, and J. As a result, the transactions by which Amounts H and I, and earnings thereon, in Account E and Account F, respectively, were deposited into an IRA set up and maintained in your name will be treated as rollover transactions within the meaning of Code section 408(d)(3). Additionally, the transaction by which Amount L was deposited in an IRA will also be deemed to have been a rollover contribution within the meaning of Code section 408(d)(3). Finally, you are granted a period not to exceed 60 days as measured from the date of this letter ruling to contribute an additional amount, not to exceed the amount

by which Amount M exceeded Amounts H, I, and L, into an IRA set up and maintained in your name. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution 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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***** (ID **-*****) 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

CC: