

INTERNAL REVENUE SERVICE

200522017

MAR 08 2005

Uniform Issue List: 408.03-00

SE: T: EP: RA: T3

Legend:

IRA X =

Company M =

Company N =

Company O =

Amount A =

Dear [REDACTED] :

This is in response to correspondence dated June 15, 2004, as supplemented by correspondence and communications dated August 6, October 18, and December 29, 2004, in which you requested 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:

On April 13, 1983, you established an Individual Retirement Annuity (IRA), with Company M. This was a one-time contribution to purchase an IRA which was a single premium deferred annuity. Company M was taken over by Company N and the IRA became IRA X. Although you received an annual statement from Company N indicating the balance and earnings for IRA X, there was no indication in your statement that the funds were maintained in an IRA. In addition, you never received the annual Internal Revenue Service Form 5498, IRA Contribution Information, from Company N. In June 2003, you decided to transfer the funds in IRA X, Amount A, to a local broker of Company O for better management of your account. You supplied the broker with a copy of an annual statement from Company N and instructed him to have Amount A transferred to your Company O account. Due to the long passage of time, you did not

recall, or have any record from Company N indicating, that Amount A was being held in an IRA. You depended on representatives of Company N and Company O to exchange the necessary information in order to properly transfer the funds. Company N did not inform your Company O broker that these were IRA funds. You have both an IRA account and non-IRA accounts with Company O. Since your broker was unaware that these were IRA funds, he deposited Amount A into your non-IRA account with Company O. When this transfer occurred, you relied upon your Company O broker to transfer the Company N funds to the same type of account which was used with Company N. You realized that the distribution from IRA X was not properly rolled over into another IRA when your Federal tax return for [REDACTED] was being prepared. At that time, your tax preparer told you that you owed additional taxes due to the full distribution from IRA X. You did not remember that the funds with Company N were in an IRA until your tax preparer identified them to you as an IRA distribution. Amount A is the amount of the distribution from IRA X which was placed into a non-IRA account with Company O. You have not withdrawn any amounts from this non-IRA account; Amount A is still invested in assets in your brokerage account with Company O.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code in this instance.

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 one-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 section 408(d)(3)(A) of the Code where 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 (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) of the Code, 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 you presented demonstrates that you communicated your intent to representatives of both investment companies that you wanted to have Amount A transferred from IRA X into the same type of account in Company O. You relied upon these representatives of the financial institutions to properly effect a direct rollover of Amount A into your IRA with Company O. Instead, the representatives of Company N did not relay the relevant information to your broker at Company O, which caused Amount A to be misdirected into a non-IRA account. Due to the passage of time and the lack of information from Company N regarding the status of IRA X, you were not aware of this error until your tax preparer informed you.

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 A. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) 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 expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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 _____.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frances V. Sloan".

_____, Manager
Employee Plans Technical Group

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