

INTERNAL REVENUE SERVICE

200609020

Uniform Issue List: 408.03-00

DEC - 7 2005

62. T. EP. RA. T3

Legend:

Taxpayer A =

IRA X =

Financial Institution B =

Financial Agent E =

Financial Consultant F =

Amount A=

Financial Institution A =

Dear [REDACTED]

This is in response to your request dated March 28, 2005, in which you request 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, age 50, represents that she received a distribution from IRA X totaling Amount A. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) was due to errors by Financial Institution A and Financial Institution B which led to Amount A being placed into a non-IRA account. Taxpayer A further represents that Amount A has not been used for any other purpose.

On October 25, 2004, Taxpayer A had a discussion with Financial Agent E, associated with Financial Institution A, wherein Taxpayer A expressed her intent to remove funds from her IRA X maintained with Financial Institution A in order to deposit said funds in another institution with the hope of achieving a higher rate of return.

On October 25, 2004, Taxpayer A discussed her desire to roll over Amount A to a new IRA and to invest the funds in a certificate of deposit ("CD") with a branch president of Financial Institution B, Financial Consultant F. On October 26, 2004, Taxpayer A completed the paperwork sent by Financial Consultant F necessary to complete her intended rollover by wire transfer. However, the Financial Institution B application form did not indicate an IRA rollover and Taxpayer A did not take notice believing that the application was for an IRA rollover because of her specific instructions given to Financial Consultant F the previous day.

On October 26, 2004, Taxpayer A also FAXED a form to Financial Institution A instructing Financial Agent E at said institution to transfer, by wire, Amount A to Financial Institution B. Said amount was so transferred and placed in a CD issued by Financial Institution B.

On December 14, 2004, Taxpayer A contacted Financial Agent E at Financial Institution A because a financial statement that she had received from Financial Institution A indicated that she had received a taxable distribution from IRA X. Financial Agent E assured Taxpayer A that the mistake would be corrected and that the correction would appear on her next statement. However, no correction was made, either by Financial Institution A or Financial Institution B, and Amount A was not timely contributed, as a rollover contribution, into an IRA with Financial Institution B. The 60-day rollover period applicable to Amount A, provided for in Code section 408(d)(3)(A), has now expired.

Taxpayer A represents that she has not used Amount A for any purpose, and that said amount is available to be rolled into an IRA.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount A 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 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 information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by errors committed by one or more financial institutions.

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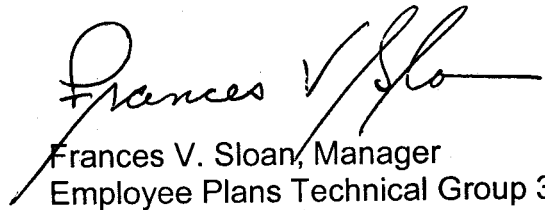
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount A into an IRA described in Code section 408(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 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 [REDACTED]
I.D. # [REDACTED] at [REDACTED]. 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 letter ruling
Notice of Intention to Disclose