

200625037



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

*Uniform Issue List 408.00-00*

MAR 27 2006

T: EP:RA:T:3

**Legend:**

Company A =

Company B =

Fund C =

Company D =

Individual E =

Date E =

Date F =

Date G =

Amount H =

Amount J =

Amount K =

IRA X =

IRA Y =

Dear :

This is in response to your request dated on July 22, 2005, 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 November 7, 2005, January 12, 2006, January 17, 2006, and January 30, 2006, supplemented the request.

Under penalty of perjury, you have submitted the following facts and representations:

You represent that you received a distribution from IRA X and IRA Y totaling Amount K. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by Individual E of Fund C, which led to Amount K being placed into a non-IRA account. You further represent that Amount K has remained in the non-IRA account and has not been used for any other purposes.

In 2002, you maintained IRA X and IRA Y, both Roth IRAs, with Company A and Company B, respectively. In 2002 you decided to invest a portion of IRA X and IRA Y in Fund C. Company D was the manager of Fund C. Individual E, who works for Company D advised you to invest a portion of your IRAs in Fund C in the name of a Roth IRA. Relying on Individual E's expertise and Fund C's offering memorandum, you withdrew Amount H from IRA X and Amount J from IRA Y, and within 60 days of receiving the distribution, you deposited Amounts H and J in an account with Fund C. Documentation submitted by you demonstrates that, at all times, both you and Fund C believed your interest in Fund C was validly invested in a Roth IRA. It was not until March 2005 that you learned, from Individual E, the Fund C is not a bank or an approved non-bank trustee, eligible to hold IRA funds.

In an affidavit dated January 10, 2006, Individual E acknowledged that he advised you that you could invest a portion of your IRAs in Fund C. Individual E states that he did not realize that an IRA had to be in the name of the financial institution as trustee or custodian for your IRA. He accepted your subscription without a financial institution as trustee or custodian.

As soon as you learned about the error, you arranged to seek a waiver of the 50-day requirement.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to distributions from IRA X and IRA Y

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 information presented and documentation submitted by you is consistent with your assertion that your failure to accomplish a timely rollover was caused by a mistake made by Individual E of Fund C, which led to Amount K being placed into a non-IRA account. The information presented by you is consistent with your assertion that you attempted to rollover Amounts H and J.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distributions of Amount H and Amount J from IRA X and IRA Y, respectively. You are granted a period of 60 days measured from the date of the issuance of this letter to make your rollover. Provided all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to Amount D, such amount 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.

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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.

If you wish to inquire about this ruling, please contact \*\*\*\*\* (ID \*\*-\*\*\*\*) at (\*\*\*)  
\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name.

Frances V. Sloan, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: