

200643002



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG - 1 2006

SE: T: EP: RA: T: 3

Uniform Issue List: 408.03-00

Legend:

Company A =

Company B =

Company C =

Individual D =

Individual E =

Individual F =

Individual G =

Individual H =

Individual J =

Date K =

Date L =

Date M =

Date N =

Amount N =

IRA X =

IRA Y =

Dear

This is in response to your request dated January 16, 2006, submitted by your authorized representative, 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"). Correspondence dated July 6, 2006, and July 19, 2006, supplemented the request.

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

You are under age 70 ½, and represent that you received a distribution from IRA X, maintained at Company A, totaling Amount N. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error on the part of Company B which led to Amount N being placed into a non-IRA account. You further represent that Amount N has not been used for any other purpose.

You maintained IRA X with Company A. In 2005 you learned of an investment opportunity with Company B. You met with Individual G, the managing partner of Company B and asked about rolling over Amount X into an IRA. Individual D attended this meeting with you, and he submitted an affidavit to the Service stating that you informed Individual G that you wanted to roll over the money from IRA X. He also affirmed that Individual G stated that the transfer of funds should not be a problem. On Date K, 2005, you also sent a letter to Individual G, stating that you wanted to "insure that the money and account are treated as a rollover". Two days later, on or about Date N, 2005, Amount N was "wire-transferred" to an account with Company B which account proved to be a non-IRA account.

On Date L, 2005, you held a conference call with Individual J of Company B, and Individual E, of Company C (where you have IRA Y). At that time Individual J said that Company B made a mistake in accepting IRA money, and that Company B was looking for a way to take care of the problem because it was not authorized to handle IRA money.

When you learned of the error you immediately instructed Amount N be transferred to IRA Y which is now at Company C. The funds were wired on or about Date L, 2005 into an IRA set up and maintained in your name with Company C.

Also, in a letter to your accountant, Individual H, dated Date M, 2006, Individual F, who is the corporate attorney for Company B, stated that "it was Company B's belief that [you] intended to roll the proceeds of [your] existing IRA to a new self-directed 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 N 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 you is consistent with your assertion that your failure to accomplish a timely rollover was caused by an error on the part of Company B, which led to Amount N being placed into a non-IRA account. The information presented by you is consistent with your assertion that you attempted to roll over Amount N into an IRA with Company B based on the belief that Company B was authorized to serve as a trustee of IRA money. Subsequently, and after the expiration of the 60-day rollover period applicable to the distribution of Amount N, you discovered that Company B was not empowered to hold funds in an IRA.

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 N from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contribution, the contribution of Amount N into IRA Y on or

Page 4

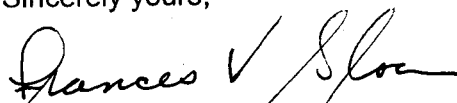
about Date L, 2005, will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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 Ron Hallsten (ID) at ()
Please address all correspondence to SE:T:EP:RA:T:3

Sincerely yours,



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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: