



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

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SEP - 1 2006

*Uniform Issue List 408.00-00*

T:EP:RA:T3

**Legend:**

Custodian A =

Professional  
Association C =

Company D =

Company E =

Attorney F =

Date G =

Date H =

Date I =

Date J =

Amount K =

Office L =

IRA X =

IRA Y =

Dear

This is in response to your request, received by the Internal Revenue Service on September 6, 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 April 18, 2006, May 22, 2006, May 31, 2006, June 6, 2006, and August 3, 2006, supplemented the request.

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

You are under age 70 ½ and represent that Amount K, was distributed from IRA X, an individual retirement arrangement described in section 408(a) of the Code, on or about Date G, 2005. 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 miscommunication and inaction of parties beyond your control.

On Date G, 2005, Amount K was wired from IRA X to Professional Association C with the intent of setting up a "real estate IRA". Representatives of Professional Association C had told you that they would be able to set up such an IRA for you. However, in the month following the distribution of Amount K, Professional Association C informed you that they were not able to set up an IRA for you, and you had to seek another custodian. You contacted Company D, which, through Custodian A, was able to set up a real estate IRA for you. IRA Y was established on Date H, 2005, within 60 days following the receipt of Amount K. You could not put Amount K into IRA Y during the 60 days because you had already purchased the property to be contributed to the "real estate IRA", and the establishment of a corporation to hold the real property in the IRA was necessary. Company D was able to assist you in organizing such corporation (Company E). The Articles of Organization for Company E were filed in Office L on Date I, 2005 (within the 60 days). However, Attorney F (attorney for Company D) did not inform you of the incorporation until Date J, 2005, after the 60-day rollover period had expired. The property that you purchased for the IRA was purchased in your name.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to your contribution of Amount K into IRA Y 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 information you presented demonstrates that, during the 60-day rollover period applicable to the distribution of Amount K from IRA X, you purchased property in your name with Amount K, with the intent of investing such property in a real estate IRA, but were prevented from doing so because there was no entity eligible to hold the property in the IRA.

Section 408(d)(3)(i) of the Code states that any amount paid or distributed out of an IRA and paid into another IRA within 60 days shall not be included in gross income of the payee or distributee. However, this section does not permit an individual to purchase real estate property with the funds distributed from an IRA and roll over such purchased property into another IRA.

Therefore, with respect to the property purchased with Amount K, the 60-day rollover period never attached. Thus, the Service cannot grant an extension to accomplish a rollover which could not have occurred during the initial 60-day rollover period.

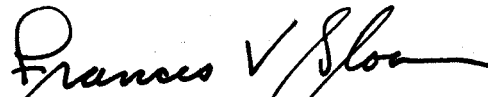
Thus, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount K and the subsequent purchase of realty. As a result, contributing the real estate property purchased with amount K into an IRA will not be considered a valid rollover within the meaning of Code 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 (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