

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

200703040

OCT 23 2006

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =
IRA X =
Amount A =
IRA Y =
Amount B =
Financial Institution D =
Date 1 =
Date 2 =
Date 3 =
Month 1 =

Dear :

This is in response to your request dated _____ as supplemented by correspondence dated _____ 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, who has not attained age 59 ½, received distributions on Date 1, 2005, from individual retirement account ("IRA") X in Amount A and IRA Y in Amount B in order to make a down payment on a residence. Taxpayer A's failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to errors on the part of Financial Institution D. Taxpayer A has further demonstrated that Amounts A and B were available to be either returned to IRAs X and Y or other IRAs within the 60-day rollover period mandated by Code section 408(d)(3)(A).

Taxpayer A asserts that in Month 1, 2005, he contacted Financial Institution D to

obtain funds from IRA X and IRA Y for a purchase of a residence. Documentation submitted by Taxpayer A establishes that Taxpayer A attempted in a timely manner to execute rollovers of Amounts A and B back into an IRA or IRA(s) at Financial Institution D by written communication authorizing rollovers of Amounts A and B. Included in the documentation is an E-Mail which indicates that on or about Date 2, 2005, within the 60-day rollover period applicable to the distributions of Amounts A and B, Taxpayer A was advised by a representative of Financial Institution D that the requested rollovers had been accomplished and that Amounts A and B had been returned to IRAs X and Y. However, shortly thereafter, Taxpayer A discovered that the rollovers had not been completed within the requisite 60-day rollover period. Additional documentation submitted establishes that rollovers of Amounts A and B to IRAs X and Y, respectively, were completed on Date 3, 2005, a few days after the 60-day period had expired.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amounts A and B.

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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 his assertion that a failure to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) was due to errors on the part of Financial Institution D. In this regard, we note that Taxpayer A requested rollovers of Amounts A and B into an IRA or IRA(s) at Financial Institution D by written communication requesting said rollovers. Taxpayer A requested assurances from Financial Institution D that the rollovers would be accomplished prior to the end of the 60-day period and received said assurances by means of an E-Mail. However, Taxpayer A later discovered that the rollovers were not completed by the end of the 60-day rollover period. Documentation submitted establishes that the rollover was completed on Date 3, 2005, a few days after the 60-day period had expired.

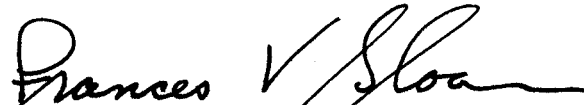
Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions to Taxpayer A of Amounts A and B from IRAs X and Y, respectively. Therefore the Service will consider the Date 3, 2005, rollover contributions to IRAs X and Y of Amounts A and B, respectively, as rollover contributions 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 _____ I.D. #
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