



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200703044

U.I.L. 408.03-00

OCT 25 2006

Legend:

Taxpayer A =

IRA X =

IRA Y =

Amount D =

Amount E =

Amount F =

Bank B =

Trustee T =

Attorney G =

Dear

This is in response to your letter dated _____ as supplemented by
correspondence dated _____
and _____ submitted on your behalf 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").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A, maintains two individual retirement arrangements, IRA X and IRA Y, with Bank B. It is represented that on _____ Amount D was transferred from IRA X to a non-IRA checking account. It is represented that on _____ Amount E was transferred from IRA X to a non-IRA account. It is further represented that on _____ Amount F was transferred from IRA Y to a non-IRA account. It is represented that the distribution of Amount E from IRA X on _____ and the distribution of Amount F from IRA Y on _____ were unintended distributions because Trustee T, the trustee of Taxpayer A's grantor trust, did not have the authority to make such withdrawals.

It is represented that at the time of the distributions, and at all times since such distributions Taxpayer A has been incapable of understanding his or managing his financial affairs and that he suffers from advanced dementia. Taxpayer A's attorney, Attorney G, represents on Taxpayer A's behalf, that Taxpayer A maintained his IRAs for his retirement security and that he had no intention of withdrawing funds from his IRAs except as required for his support or to comply with the distribution requirements under the Code.

Trustee T was appointed as the successor trustee of Taxpayer A's grantor trust on _____. On that same day, Taxpayer A resigned as trustee of his grantor trust in favor of Trustee T.

It is represented that it was Trustee T who realized that Taxpayer A had few assets to retire on and that those assets were realizing a very low return on investments in interest bearing accounts at Bank B. It is further represented that Trustee T became very concerned about the rate of interest earned at Bank B and was so focused on this goal that he failed to realize that the accounts were IRAs and that closing the accounts would constitute taxable distributions or the consequent need for a rollover. Attorney G states that Trustee T represents that no one at Bank B informed him that taxable distributions of the IRAs was about to occur and that such distributions could be rolled over tax-free to one or more IRAs.

It is represented that IRA X and IRA Y were at all times up to the dates of the distributions held in Taxpayer A's name and not in the name of Trustee T in his capacity as trustee of the grantor trust. Attorney G represents that Trustee T is not Taxpayer A's attorney-in fact and that he therefore, had no authority to make IRA distributions on Taxpayer A's behalf. Attorney G further asserts that he was not consulted about the distributions and was not aware of the IRA distributions that resulted from Trustee T's actions. Attorney G states that he learned of the distributions when he received the Forms 1099-R in February 2006. Attorney G states that Bank B erred in making the unauthorized distributions from IRA X and IRA Y. Attorney G also states that Bank B's records do not show that

Trustee T was authorized to take any action with respect to Taxpayer A's IRAs, that Bank B personnel did not make a determination as to whether the person (Trustee T) who requested the distributions was authorized to do so, and that Bank B personnel caused the unauthorized distributions to be made notwithstanding that Trustee T had no authority to take any action with regard to the IRAs. In a letter to the Service dated _____ Attorney G indicates that Bank B reversed the transactions relating to the unauthorized withdrawals and restored such withdrawals to IRA X and IRA Y. Bank B's actions occurred subsequent to the applicable 60-day rollover period for the distribution of Amount E from IRA X and Amount F from IRA Y.

Based upon the foregoing facts and representations, you request that the Service, under its authority in Rev. Proc. 2003-16 to waive the 60-day rollover requirement for failed rollovers, allow Taxpayer A to redeposit Amount E and Amount F into an IRA.

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 received 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 in 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 included 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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 his failure to accomplish a timely rollover was caused by Trustee T, acting without the scope of his authority in taking a distribution of Amount F together with errors committed by financial institutions and third parties in making the distributions which caused Taxpayer A and Attorney G not to become aware of the distributions until after the 60 day rollover period had elapsed. Upon first notice of a rollover failure, Attorney G took all appropriate action to correct the failure and immediately had Bank B reverse the transaction and deposit Amount F into another IRA.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount F and Amount F may be treated as a valid rollover contribution within the meaning of Code section 408(d)(3).

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

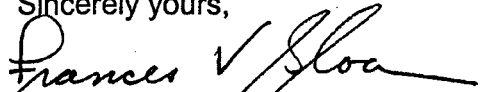
This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter has been sent to your authorized representative in

accordance with a Power of Attorney (Form 2848) on file in this office.

If you have any questions regarding this letter, please contact
SE:T:EP:RA:T:2 at

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

cc: