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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

*Uniform Issue List 408.00-00*

DEC - 6 2006

T:EP:RA:TB

**Legend:**

Company A =

Company B =

Company C =

Individual D =

Individual E =

Amount H =

IRA X =

Dear:

This is in response to your request dated September 13 2006, 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 October 26, 2006, supplemented the request.

You represent that you received a distribution totaling Amount H from IRA X. 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 bad advice given to you by a representative of Company C.

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

You maintained IRA X with Company B. Your employer, Company A was suffering financial hardships. Consequently, in order to raise money, they offered employees an opportunity to purchase stock in the company. You decided to purchase the stock of Company A. You state that you weighed all of your options for the investment of Company A stock, and decided that it would be best to utilize IRA X. You contacted your accountant at Company C, Individual D, who advised you to speak to her associate, Individual E, who informed you that you could not roll over the funds to purchase the stock, and that your only option was to cash out IRA X and invest in Company A stock. You were informed of the tax consequences of a withdrawal which included including the distribution in income as well as a premature distribution penalty. Knowing this, you withdrew Amount H from IRA X In November 2005, and purchased stock of Company A. Approximately three months later, in February, 2006, you were speaking with a co-worker who advised you that he utilized his IRA to invest in Company A stock without taking a distribution from said IRA. You immediately contacted Individual D who then told you that you could have used the IRA X funds to invest in Company A stock without taking a distribution. You were not told of this option when you withdrew the funds from IRA X

Based on the facts and representations, you request 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 Amount H from IRA X. because the failure to waive such requirement would be against equity or good conscience.

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 60<sup>th</sup> 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 60<sup>th</sup> 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.

You have not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected your ability to timely roll over Amount H, or any portion thereof, to an IRA. You have stated that you withdrew the funds from IRA X for the purpose of investing in Company A stock. You were fully aware of the tax consequences, and, at the time of distribution, had no intention of rolling over the funds distributed from IRA X into another IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount H. Thus, your contributing Amount H distributed from IRA X, or any portion thereof, into an IRA will not be considered a valid rollover because the 60-day requirement under section 408(d)(3) of the Code with respect to such distribution/contribution will not be satisfied.

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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 (202) 283-9631. Please address all correspondence to SE:T:EP:RA:T .

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan", with a large checkmark or flourish over the name.

Frances V. Sloan, Manager,  
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose