



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List 408.00-00

Number: **200740021**
Release Date: 10/5/2007

JUL - 9 2007

T:EP:RA:T3

Legend:

Company A =

Company B =

Fund C =

Date H =

Date J =

Amount H =

Amount J =

IRA X =

Account Y =

Dear :

This is in response to your request dated April 14, 2007, 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 June 25, 2007, supplemented the request.

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

You are 56 years of age, and represent that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by Company B which led to Amount H and Amount J being placed into a non-IRA account. You further represent that Amounts H and J have not been used for any other purpose.

You maintained IRA X with Company A. On Date H and J, 2006, you requested that Company A directly transfer Amount H and Amount J to Company B for investment in Fund C. It was your intention that the funds were to be held in an IRA with Company B. Prior to the direct transfer you inquired of Company B as to whether an IRA transfer to Company B was appropriate. You were told that it was appropriate.

Late in 2006, you inquired of Company B about increasing your investment with Fund C and discovered after several conversations that Company B was not a qualified IRA custodian. Thus, Amounts H and J were invested in Account Y, a non-IRA account.

Documentation submitted by you, including statements received from Company B and Fund C reflecting that your investment was being held in an IRA, demonstrates that, at all times, you believed your funds were validly invested in an IRA, and had no basis to question Company B's status as a qualified IRA custodian. It was not until after the 60 day period for rolling over had passed that you learned that Amount H and Amount J were not held in an IRA.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution from IRA X.

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)(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 you is consistent with your assertion that your failure to accomplish a timely rollover was caused by an error made by Company B which led to Amounts H and J being placed into a non-IRA account. The information presented by you is consistent with your assertion that you attempted to rollover Amount H and Amount J.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distributions of Amount H and Amount J from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amounts J and H into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to such contribution, Amounts J and H will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

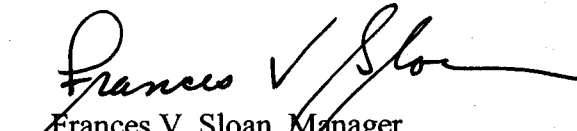
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

200740021

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 [REDACTED] (ID [REDACTED]) at ([REDACTED]) [REDACTED]. 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