



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200835035

JUN 03 2008

T:EP:RA:T3

Uniform Issue List: 408.03-00

Legend:

Taxpayer A     =  
IRA X           =  
Fund Y          =  
Amount A       =  
Company A       =  
Entity V        =  
Date 1          =

Dear

This is in response to your request dated October 5, 2007, as supplemented by correspondence dated October 16, 2007, December 17, 2007, and January 11, 2008, 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, age 69, represents that he received Amount A from IRA X on Date 1, 2006. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the error of Company A in failing to follow Taxpayer A's instructions and in failing to follow its own internal procedures. Taxpayer A further represents that Amount A has not been used for any other purpose.

On Date 1, 2006, Taxpayer A requested that Company A invest Amount A in Fund Y as an investment of IRA X via a custodian to custodian transfer. Company A failed to follow its own procedures in not recording Fund Y, which is managed by Entity V, as an outside IRA investment custodied by Company A and in distributing Amount A from IRA X resulting in a Form 1099-R being sent to Taxpayer.

By letter dated December 18, 2007, Company A has admitted its error in furnishing Taxpayer A an incorrect distribution form and in failing to follow Taxpayer A's

instructions and its own internal procedures as a result of which Taxpayer A received a Form 1099R indicating that Amount A was a taxable distribution. Entity V asserts that Taxpayer's investment in Fund Y was at all times held in the name of IRA X, and that the funds were used for no other purpose.

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

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.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that the error of Company A in failing to follow Taxpayer A's instructions and in failing to follow its own internal procedures resulted in Taxpayer's investment in Fund Y being characterized as a distribution from IRA even though the Fund Y investment was at all times held in the name of IRA X. Taxpayer has represented that no additional funds have been invested in Fund Y and that the current value of his investment in Fund Y is solely the result of the investment of Amount A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution and investment of Amount A in Fund Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to rollover Fund Y in kind at its current value to IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Taxpayer A's investment in Fund Y in kind at its current value will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

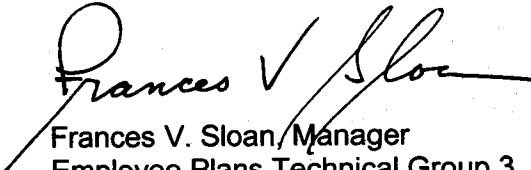
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

A copy of this letter ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

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 xxxxxxxxxxxxxxxx  
at xxxxx . 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