



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

200941032

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

SE: T: EP: RA: T3

JUL 17 2009

U.I.L. 408.03-00

XXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXX

Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Bank B = XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Account C = XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Amount D = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Fund E = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Amount F = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Amount G = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Amount H = XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxxxx

This letter is in response to a request for a letter ruling dated xxxxxxxxxx , as supplemented by correspondence dated xxxxxxxxxx, 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, a 52 year old electrical engineer, maintained IRA X with Bank B.

Taxpayer A had a Bank B portfolio with a fair market value of Amount F as of xxxxxxxx. Bank B portfolio contained Amount G of Retirement funds and Amount H of non-Retirement funds. At the time, Bank B investment portfolio was comprised of money market, bond and stock funds. One of the funds was noted as Fund E which had two components, namely: IRA account and non-IRA account.

Taxpayer A states that because of the national and global recession that was occurring in 2008, the IRA component of Fund E realized a significant drop in market value. Taxpayer A further states that in an attempt to minimize any further value erosion, he attempted to transfer the investments from the Fund E IRA stock portfolio to a more conservative and secure IRA portfolio comprised of government securities, bond and money market funds.

Taxpayer A states that on XXXXXXXXXXXX, when he liquidated the IRA stock portfolio portion of Fund E, it was his intention to transfer those funds, totaling amount D, to a more conservative investment portfolio within the IRA component of Fund E but when the new investment funds were established in Fund E, he referenced the non-IRA account number rather than the IRA account number.

It is represented that Bank B allows Taxpayer A to self direct and self administer the fund. In addition, Bank B provides web site instructions as to the procedures and process that must be followed in order to self direct the investments and on-line telephone support. Taxpayer A also states that he, being an educated person, was convinced that he followed the proper procedures and did not require any further help or assistance in this regard. Taxpayer A asserts that he did not realize this mistake on his part until the time he started preparing his tax return and received 1099R from Bank B.

Taxpayer A also represents that upon realizing this error; he contacted Bank B and, as a result, managed to transfer Amount D to the correct IRA account on XXXXXXXXXXXX.

Documentation and Account statement submitted with your request indicate that Amount D was transferred from a non-IRA account to an IRA account with Bank B on XXXXXXXXXXXX which was beyond the prescribed 60 day rollover period.

Taxpayer A asserts that his failure to accomplish a rollover of Amount D within the 60 day period was due to the confusing instructions provided by Bank B on its web site.

Based upon the foregoing facts and representations, Taxpayer A requests that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

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 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 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 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.

Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over Amount D or any portion thereof, to an IRA. Rather, he has admitted that when the new investment funds were established in Bank B, he referenced the non-IRA account C rather than the IRA account.

Therefore, under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement for the distribution of Amount D from IRA X. Thus, the XXXXXXXXXXXX contribution of Amount D to an IRA will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code because the 60-day rollover requirement was not satisfied.

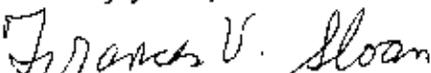
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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 is being sent to your authorized representative in accordance with Form 2848 on file in this office.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxx, ID Number xxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxxxxxx.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
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