



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200506031

NOV 17 2004

Uniform Issue List 408.00-00

SEP:IRA:T3

Legend:

Company A =

Company B =

SEP IRA X =

SEP IRA Y =

Amount E =

Amount F =

Amount G =

Dear

This is in response to your request dated September 20, 2004, submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

Your representative has submitted the following facts and representations:

In [REDACTED], you requested that Amount E be transferred from SEP IRA X maintained at Company A, in a direct trustee-to-trustee transfer, to SEP IRA Y

maintained at Company B. SEP IRA X contained four mutual fund accounts. You used a standard account transfer form issued by Company B to effectuate the transfer from SEP IRA X. However, Company A processed the transfer as a taxable distribution and erroneously withheld Amount F in federal income tax. Thus, only Amount G was transferred to SEP IRA Y. You first became aware of the error when you received your Form 1099-Rs (for each mutual fund held in SEP IRA X) for [REDACTED] which reported a taxable distribution on Amount E. Company A, by letter dated [REDACTED] agreed to correct the 1099-Rs. However, as of the date of your request, Company A has not reissued correct 1099-Rs. You wish to deposit Amount F into SEP IRA Y.

Documentation submitted as part of this request (and referred to above) confirms your intent to complete a direct trustee-to-trustee transfer of Amount E into SEP IRA Y.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to your contribution of Amount F into SEP IRA Y because the failure to waive such requirement would be against equity or good conscience.

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)(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 issue presented in this case is whether you may properly roll over Amount F into IRA Y. We note that you had the intent to transfer, by direct trustee-to-trustee transfer, all amounts standing in SEP IRA X, totaling Amount E, into SEP IRA Y. However, because of an error on the part of Company A, the requested transfers were treated as taxable distributions. As a result, Company A withheld Amount F for federal income taxes, and only Amount G was transferred to SEP IRA Y.

The facts indicate that you had the intent to transfer Amount E into SEP IRA Y. Furthermore, Amount G had been placed into SEP IRA Y and the difference between Amount G and Amount E (Amount F) would also have been placed in SEP IRA Y but for an error on the part of Company A which was beyond your control.

Accordingly, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount E from SEP IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such distribution, the amount to be deposited into SEP IRA Y 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.

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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.

Pursuant to Form 2848 submitted with your request, this ruling is being sent to your authorized representative. A copy of our reply is being furnished to you.

If you wish to inquire about this ruling, please contact ***** (ID **-*****) at [REDACTED]. Please address all correspondence to [REDACTED].

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: