

200539031



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

JUN 30 2005

Uniform Issue List: 408.03-00

*T:EP:BA:T3*

Legend:

Taxpayer A =

Amount D =

Amount E =

Company E =

Company P =

Company X =

IRA X =

IRA Y =

Company U =

Company R =

Dear [REDACTED]

In letters dated October 5, 2004, November 18, 2004, and December 3, 2004, your authorized representative requested 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:

Upon his retirement in December 1999, Taxpayer A withdrew assets held by the profit sharing trust of his former employer. The funds were deposited into IRA X sponsored by Company X within the required 60-day rollover period.

In September 2002, Taxpayer A became aware of an investment opportunity marketed by Company R. Company X did not list this investment as a choice for its IRA accounts. IRA X did, however, allow Taxpayer A to transfer funds to another IRA rollover account. Taxpayer A directed Company X to wire transfer Amount D from IRA X to IRA Y sponsored by Company R which would allow an investment in a fund managed by Company R. Company R facilitated the transaction for Taxpayer A. Taxpayer A received a 2002 Form 1099-R from Company X and received a 2002 Form 5498 from Company E showing that the rollover was not taxable.

In November 2003, Taxpayer A became aware of another investment opportunity, marketed by Company P. Company X did not include these investments as a choice for its IRA accounts. Taxpayer A directed Company X to wire transfer Amount E from IRA X to Company P for deposit into an IRA rollover account for the benefit of Taxpayer A which would allow an investment in a fund managed by Company P. Company P facilitated the transaction for Taxpayer A.

In February 2004, Taxpayer A received a year [REDACTED] Form 1099-R from Company X reporting distribution of a taxable Amount E. Taxpayer A did not receive a year 2003 Form 5498 concerning Amount E. Taxpayer A questioned Company P and was told that Company P would not issue a Form 5498 because it was not a custodian and only custodians could issue Forms 5498. Taxpayer A was then told by Company P that Company U would facilitate a solution as Company U could act as a custodian of an IRA account for an investment in a fund managed by Company P.

Taxpayer A prepared his own [REDACTED] federal income tax return. The return was filed on or about April 7, 2004. Taxpayer A did not report Amount E as income because he believed that there was a clerical error that would be corrected by Company U.

In August 2004, Taxpayer A contacted Company U and was told that he was misinformed. Company U would not accept his investment with Company P as an IRA rollover account.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount E because the failure to waive such requirement would be a hardship and 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 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Code section 408(d)(3)(E) provides that paragraph 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (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.

Revenue Procedure 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 on behalf of Taxpayer A indicates that Taxpayer A relied on Company P to complete the rollover of Amount E from IRA X into a rollover account Taxpayer A intended to maintain with Company P. Taxpayer A relied on Company P's representation that it was a proper custodian for IRA accounts. As a result of Taxpayer A's reliance on this misleading information, Taxpayer A failed to make a rollover of Amount E within the requisite 60 days.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount E. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount E to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

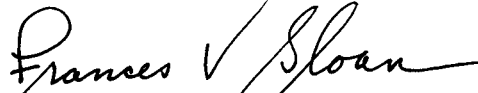
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

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

If you wish to inquire about this ruling, please contact [REDACTED]  
[REDACTED] at [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 letter ruling  
Notice of Intention to Disclose