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

200401023

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT - 9 2003

Uniform Issue List: 408.03-00

T:EP:RA:T4

Legend:

Taxpayer A =

Bank A =

Bank B =

Amount C =

Dear

This is in response to your letter dated April 14, 2003, 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 maintained an Individual Retirement Account (IRA) with Bank A. During 2002, the interest she was receiving from Bank A decreased significantly. She found a better interest rate with Bank B and decided to close the IRA with Bank A and open a new IRA with Bank B.

On July 2, 2002, Taxpayer A received a check from Bank A for the full amount of her IRA, which was Amount C. On that same day, Taxpayer A took the check she had just received to Bank B to open the new IRA. She met with an officer of Bank B and told her that she had just closed her IRA with Bank A and wanted to open a new IRA with Bank B. The officer opened a new account and deposited the check into the account. However, contrary to Taxpayer A's instructions, Bank

B opened a non-retirement certificate of deposit. Taxpayer A discovered the error when she met with her accountant to prepare her taxes for 2002.

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

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, 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 by Taxpayer A demonstrates a mistake on the part of Bank B failing to complete the transaction as instructed by Taxpayer A, and indicates that Taxpayer A could not reasonably satisfy the requirement that Amount C be deposited in an IRA within 60 days of the distribution from the IRA held with Bank A. The failure to deposit Amount C into a rollover IRA within the 60-day period was beyond the reasonable control of Taxpayer A, and the failure to waive the 60-day requirement would be against equity or good conscience.

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 of Amount C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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.

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
Please address all correspondence to SE:T:EP:RA:T:3.

Sincerely yours,

Frances V Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose