200420035

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 18 2004

Uniform Issue List: 408.03-00

[redacted]

Legend:

Taxpayer A = [redacted]

Bank F = [redacted]

Bank V = [redacted]

Dear [redacted]

In letters dated October 24, 2003, and December 18, 2003, your authorized representative requested, on your behalf, 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 decided that she did not want to do business with Bank V and asked that all her accounts be closed. Bank V issued a cashier's check on January 22, 2002, in the amount of $43,849.27. Although the funds were from an individual retirement account (IRA), this was not stated on the cashier's check. That same day Taxpayer A took the cashier's check and deposited it into an account at Bank F. On March 1, 2002, Taxpayer A indicated to Bank F that she wanted $25,000 of the $43,849.27, which was deposited on January 22, 2002, to be used to establish an IRA.

In 2003, when the Taxpayer A brought her information in for tax preparation it was discovered that the $25,000 was not in an IRA but had instead been deposited into a regular savings account. Until that time, Taxpayer A thought she had set up the rollover account correctly. You represent that Bank F will not permit a rollover of the funds without a ruling from the Internal Revenue Service.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of the $25,000 amount because the failure to waive such requirement would be a hardship and against equity or good conscience.

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.

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(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 by Taxpayer A demonstrates a mistake on the part of Bank F in not following the instructions of Taxpayer A resulting in the failure of Taxpayer A to roll over $25,000 into an IRA. Taxpayer A believed she had an IRA until this error was detected by her Certified Public Accountant in calendar year 2003 while working on her tax return.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the $25,000 received by Taxpayer A during January, 2002, of her Bank V IRA (less amounts described below). Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter to make a rollover contribution of her $25,000 of Bank V IRA (less amounts described below) 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).

The Service notes that Taxpayer A has attained age 70 1/2. In this regard, Taxpayer A may not contribute, as a rollover contribution, any amounts received from her Bank V IRA that would have constituted a required distribution with respect to calendar year 2003 and that would constitute a required distribution for calendar year 2004.

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 , I.D. , at . Please address all correspondence to SE:T:EP:RA:T3.

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

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