

200422058



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR - 4 2004

Uniform Issue List: 408.03-00

Legend:

Company A =

Company B =

Company C =

Account M =

Account N =

IRA X =

IRA Y =

IRA Z =

Dear

This is in response to a request submitted by letter dated July 7, 2003, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated January 21, 2004, and February 26, 2004, supplemented the request.

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

In November 20, because you were worried about continual losses in the stock market, you took distributions from your individual retirement accounts (IRA X, IRA Y and IRA Z). You transferred \$***** from IRA X, \$***** from IRA Y, and \$***** from IRA Y (a total of \$*****), to Account M and Account N with Company A. You were told, at the time of the distribution from the IRAs, by a representative of Company A that he (the representative) was not a tax expert and that you should contact a tax advisor. In April, you went to Company C to have them prepare your tax returns for the calendar year, and were advised that the distributions from the IRAs would be 100 percent taxable as ordinary income and not as a capital gain. Upon realizing the tax implications of the transaction you contacted Company A and asked them to reopen your IRAs. Because 60 days had elapsed since the distributions from IRAs X, Y, and Z, the Company A representative would not authorize you to roll over the funds into one or more IRAs.

On January 23, the funds in Accounts M and N which represented the distributions from IRAs X, Y, and Z were transferred to a Company B savings account. The funds are still in that account.

Based on the foregoing, you request that the Internal Revenue Service waive the 60-day rollover limitation under section 408(d)(3) of the Code in order to allow you to roll over the IRA X, IRA Y, and IRA Z distributions to another IRA (or IRAs).

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 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, , 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, , 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.

In this case, we note that you did not intend to roll over your distribution from IRAs X, Y, and Z into one or more IRAs at the time that you received them. To the contrary, the information presented by you indicates that you withdrew the funds from IRA X, IRA Y, and IRA Z in order to minimize your investment losses. You intended to use losses from other investments to offset the gains from said IRA distributions. It was only after you realized that you could not do so, and realized the negative tax implications, that you decided to roll over your IRA distributions. Furthermore, at the time that you received your IRA distributions you were advised to seek advice from a tax professional. You did not do so at that time. If you had done so, it is likely that you would have been informed of the tax ramifications of the distributions from the IRAs.

In conclusion, we believe that the information presented does not demonstrate circumstances that would justify a waiver of the 60-day rollover period pursuant to section 408(d)(3)(I) of the Code. Under these circumstances, the failure to waive the 60-day requirement would not be against equity or good conscience.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distributions of the amounts from IRAs X, Y, and Z.

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 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.

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If you wish to inquire about this ruling, please contact ***** (ID **-*****) at (***)
-* (not a toll free number). 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 ruling letter

Notice of Intention to Disclose