



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200502053

OCT 19 2004

Uniform Issue List: 408.03-00

SE:T:EP:IRA:T3

Legend:

Individual A =
Amount D =
Amount E =
Bank F =
Bank G =
Bank H =
IRA X =

Dear

This is in response to a request dated May 28, 2004, submitted on your behalf 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"). Correspondence dated July 16, 2004, supplemented the request.

Your authorized representative has submitted the following facts and representations:

You established an individual retirement arrangement ("IRA X"). Your IRA contained approximately Amount D. On August 27, [REDACTED], you requested that Amount E be wired to your account at Bank F for the establishment of a self-directed IRA. Shortly thereafter, your husband instructed Bank F to issue cashiers checks to Bank G for the purpose of purchasing Bank G stock for your IRA, which you believed was established at Bank F.

On September 9, [REDACTED], a cashier's check was issued to Bank G from Bank F for the purchase of Bank G stock. The cashiers check indicated that it was from an IRA in your name. The check was accompanied by instructions to make the stock certificates payable to "Individual A, Self-Directed IRA"

At the time of the investment in Bank G stock, you believed that you were making the investment through your IRA. In November [REDACTED], you were instructed by the trust officer of Bank G that the investment could not be made through Bank G because Bank G could not act as custodian for this type of IRA. Immediately upon learning this, you instructed Bank G to issue the shares under the name of Bank H as trustee for your IRA. Around late February, [REDACTED] Bank H told you that they could not establish an IRA because no IRA had been established at Bank F, and the 60 day rollover period had already expired. This was the first time you realized that no IRA had been established with bank F.

It is represented that Amount E will be contributed to an IRA in your name within 60 days after a waiver is granted.

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.

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, but not limited to: (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 you demonstrates that you had no knowledge that an IRA had been established with Bank F. In fact, the discussion that you had with Bank F indicated that an IRA was established and the cashier's check that you received from Bank F indicated that the funds were in an IRA. It was only after you tried to direct an IRA investment that Bank H informed you that an IRA had not been established with Bank F. This was after the 60 day period for rolling over had passed.

Therefore, based on the above, 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 IRA X. You are granted a period of 60 days from the issuance of this ruling letter to complete the rollover of Amount E into an IRA maintained in your name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the

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amounts deposited into another IRA, 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, if any, that are required to be distributed by section 401(a)(9) of the Code

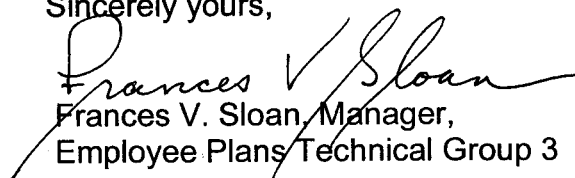
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***** (ID: **-*****) at (***) ***-****. 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

CC: