



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200548030

SEP - 9 2005

Uniform Issue List: 408.03-00

SE. T. EP. RA. T3

Legend:

Bank A =

Amount B =

Date M =

IRA X =

Dear

This is in response to your request dated April 14, 2005, as supplemented by correspondence dated July 26, 2005, 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

You are 55 years old, and represent that you received a distribution of Amount B from IRA X (an individual retirement arrangement described in section 408(a) of the Code) on Date M, [REDACTED]. You withdrew Amount B from IRA X because you were concerned about the losses that IRA X was incurring. The next day you deposited Amount B in a non-IRA account with Bank A. Although you state that you thought the money was going to be tax-deferred, you admit that at no time did you inform anyone at Bank A that Amount B was from an IRA or that you desired to deposit said amount into an IRA. You also state that your primary reason for depositing Amount B into an FDIC insured account was to avoid any further losses. While your tax returns for calendar

year [REDACTED] were being prepared, you were informed that you would be taxed on the withdrawal of funds from IRA X.

Additionally, you represented that you subsequently withdrew part of Amount B from the account at Bank A to purchase a motorcycle.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount B contained in section 408(d)(3) of the Code in this instance.

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 (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.

We do not believe that the information presented, and documentation submitted, demonstrates circumstances that would justify a waiver of the 60-day rollover period pursuant to section 402(d)(3)(I) cited above.

You did not roll over the IRA X distribution received by you during the calendar year [REDACTED]. You used part of Amount B to purchase a motorcycle. You do not assert that representatives at Bank A misunderstood your desire to establish an IRA because you never informed them that Amount B was a distribution from an IRA, or that you desired to establish an IRA at Bank A. Also, you do not assert that you were unable to complete a rollover due to any of the factors in Rev. Proc. 2003-16. Rather, the information submitted by you demonstrates that the ability to properly deposit Amount B into an IRA, within the 60-day rollover period, was within your control.

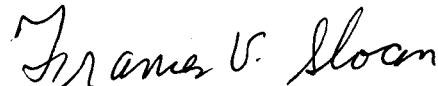
Therefore, under the circumstances presented in this case, the IRS declines to waive the 60-day rollover requirement.

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 ***** (ID **-****) at [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager,
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose