



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

200611038

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

DEC 22 2005

SE: T. EP: PA: T3

Legend:

Company A =

CEO B =

Attorney D =

Amount F =

Date M =

Date N =

Date O =

Date P =

Date Q =

IRA X =

IRA Y =

Dear

This is in response to your request for a letter ruling dated June 13, 2005, submitted by your authorized representative regarding the waiver of the 60-day rollover requirement, as authorized under section 408(d)(3)(I) of the Internal Revenue Code ("the Code"), with respect to the distribution of a stock certificate from IRA X and the direct contribution of the cash resulting from the liquidation of the stock certificate into a new IRA. Correspondence dated December 15, 2005, supplemented the request.

Your authorized representative has submitted the following facts and representations:

You held [REDACTED] shares of Company A stock in IRA X. Company A, formerly a publicly traded company, reached an agreement in [REDACTED] for CEO B to take the company private. As part of the transition from a public company to a private company, attorneys involved in the transaction were required to verify the ownership of Company A.

You provided the attorneys with a letter from IRA X's custodian stating that IRA X held 56,000 shares of Company A stock. However, this letter was deemed unacceptable by the attorneys and the attorneys indicated that they must see the actual stock certificate in order to verify the shares in IRA X. You instructed your assistant to obtain and forward the stock certificate to Attorney D, the attorney for Company A, on Date M, 2004, which she did.

You represent that your intention in obtaining the stock certificate was simply to allow the attorneys to verify ownership of the stock. You had no intention of taking a distribution of the stock from IRA X and you were not aware that the stock certificate was titled in your name, as opposed to IRA X's name, until Attorney D returned it to you approximately 4 ½ months later, on Date N, 2005, after the 60-day rollover period had expired.

You were not aware that the transaction, which was intended solely to allow the attorneys to verify IRA X's ownership of Company A stock, had resulted in a distribution from IRA X. You were not informed by IRA X custodian or the attorneys that received the stock certificate that this transaction resulted in a distribution from IRA X.

As soon as you noticed that the stock certificate was issued in your name and not the name of IRA X, you contacted the IRA X custodian to inquire as to why the name on the stock certificate was not the name of your IRA. You were informed by IRA X custodian for the first time that the transaction resulted in a distribution from IRA X and that the 60-day rule applied.

You held the stock certificate until Date O, 2005. The new IRA custodian (IRA Y) would not hold privately held stock. Thus, on Date P, 2005, you sent the stock certificate to the transfer agent to be cashed in as part of Company A's conversion from a public company to a private company. On date Q, 2005, upon receipt of the check of Amount F, received from the transfer agent, you deposited such check directly into IRA Y.

Based on the forgoing, you request a ruling that the Service waive the 60-day rollover requirement, as authorized under §408(d)(3)(I) of the Code, with respect to the distribution of the Company A stock certificate from IRA X

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(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.

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.

The information presented and documentation submitted by you indicates that you were not given proper guidance by the professionals (IRA custodian and attorneys) involved in this transaction as to the proper handling of IRAs. You never saw the stock certificate until when it was originally distributed from IRA X, and it remained with the attorneys for Company A until after the 60-day rollover period expired. The Company A stock certificate distributed from IRA X remained in certificate form from its distribution on Date M, 2004 until Date P, 2005 when it

was handed over to the transfer agent to be cashed in as part of Company A's conversion from a public company to a private company. Since the resulting cash received by you was contributed directly into a new IRA, you did not have the use of any cash with respect to the assets that were not rolled over within the 60-day period.

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 the Company A stock certificate from IRA X, and subsequent sale of stock for Amount F. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount F will be considered a rollover contribution 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.

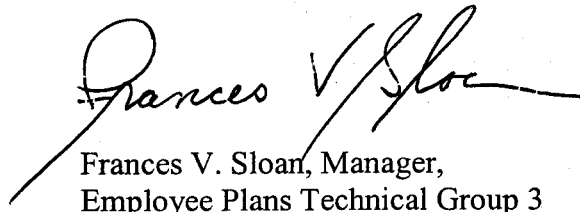
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

A copy of this letter has been sent to your authorized representative 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:T :T3

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose

CC: