



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200423032

MAR 10 2004

Uniform Issue List: 408.03-00

SE: T: EP: RA: T3

Legend:

Taxpayer A =

Amount D =

Company A =

Company E =

Brokerage Firm C =

Dear

In letters dated July 21, 2003, and February 18, 2004, your authorized representative requested 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:

In March of _____, Taxpayer A was initially advised by Brokerage Firm C of a "hot" stock tip involving a company (Company A) that was having an initial public offering of its stock. Taxpayer A was told there would be no tax due, as the stock would be held in a new Individual Retirement Account (IRA) after rolling over funds from his existing IRA maintained with Company E to acquire the stock. Brokerage Firm C failed to accomplish the intended rollover by failing to provide the necessary paperwork to Taxpayer A. In an effort to meet the 60 day-rollover period, Taxpayer A completed the withdrawal request himself, still under the impression he was completing a timely rollover.

Amount D was withdrawn from Taxpayer A's IRA and none of it was distributed to Taxpayer A. Amount D went directly to Brokerage Firm C.

At all times until Taxpayer A received a Form 1099 in year _____ Taxpayer A was under the erroneous impression that Amount D had been rolled over into a new IRA.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D 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 an error on his part caused by his relying on his broker to establish an IRA. Taxpayer A believed that Brokerage Firm C was effecting a rollover of Amount D from Taxpayer A's initial IRA held with Company E into a new IRA maintained with Brokerage Firm C. Taxpayer A believed that after Amount D had been contributed into the IRA maintained with Brokerage Firm C, Brokerage Firm C would purchase securities of Company A with amounts maintained in the new IRA. All stock purchase transactions involving Amount D would occur within the "ambit" of the IRA and no distribution from said IRA would have occurred. Said rollover/purchase transaction did not occur.

In short, Taxpayer A's broker provided misleading information to Taxpayer A and did not exercise due diligence in establishing a new IRA rollover account holding Amount D. The transaction resulted in Taxpayer A's failing to effect a rollover within 60 days.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount D during March. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount D 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).

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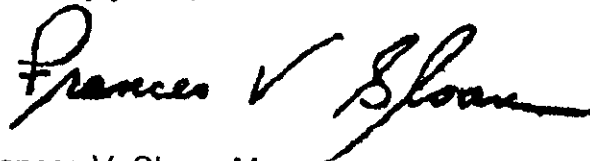
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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
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,

A handwritten signature in black ink that reads "Frances V. Sloan". The signature is written in a cursive style with a large initial "F" and a long, sweeping underline.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose