

INTERNAL REVENUE SERVICE

Uniform Issue List: 408.03-00

200433023

MAY 18 2004

Legend:

SE:T:EP:PA:T3

Company A =

Amount B =

Amount C =

Amount D =

Dear :

This is in response to your correspondence dated February 4, 2004, as supplemented by your correspondence dated April 24, 2004, in which you 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:

On you received distributions from your Simplified Employee Pension (SEP) and your Individual Retirement Arrangement (IRA). Both your SEP and your IRA were funded through Company A. The amount of the distribution from the SEP was Amount B and the amount of the distribution from the IRA was Amount C.

On you were also told by an Investment Specialist from Company A that you would be subject to tax on the distributions unless you rolled over these amounts into a Rollover IRA within 90 days. Your intention was to roll over Amount B and Amount C into a Rollover IRA which would be established with a different investment company.

During subsequent discussions with a Company A Investment Specialist, you were informed that you had the option of depositing the two distributions into a single IRA. Since the SEP had been inactive for a long period of time and you were not sure if you would reactivate the SEP in the near future, the Investment Specialist suggested that you temporarily deposit the two distribution checks into a money market account rather than go through a more complicated process of changing the type of retirement accounts at a later date. Since you thought that you had a maximum period of 90 days to roll over the two distributions and were leaving for an extended business trip, you agreed to temporarily deposit Amounts B and C into a money market account.

On _____ you attempted to roll over Amounts B and C from the money market account into a Rollover IRA. You were informed that the 60-day rollover period had expired and Amounts B and C would not be accepted into the Rollover IRA.

Because you are unemployed, since _____ you have withdrawn approximately Amount D for rent, food, transportation, health insurance, automobile insurance and loan repayments.

Based on these facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code regarding Amount B and Amount C.

Section 408(k)(1) of the Code provides, in part, that the term "simplified employee pension" (SEP) means an individual retirement arrangement (IRA) which meets the requirements of paragraphs (2), (3), (4) and (5).

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 one-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)(l) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) 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, 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) of the Code, 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 you presented demonstrates that you relied upon the advice of the Company A Investment Specialist who provided you with erroneous information regarding the proper period of time to effect a rollover. Because of this incorrect information, you thought that you had 90 days, instead of 60 days, to roll over Amount B, your distribution from your SEP, and Amount C, your distribution from your IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amounts B and C (less Amount D). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amounts B and C (less Amount D) into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount B and Amount C, less Amount D, will be considered rollover contributions within the meaning of section 408(d)(3) 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.

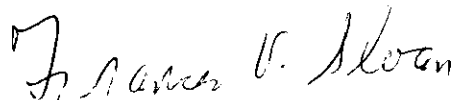
This letter expresses no opinion as to whether the SEP or the IRA described herein satisfied the requirements of section 408 of the Code.

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.

200433023

If you wish to inquire about this ruling, please contact
Please address all correspondence to

Sincerely yours,

A handwritten signature in cursive script that reads "James V. Moran".

, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose