



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200618026

FEB - 7 2006

T:EP:RA:T3

Uniform Issue List 408.00-00

Legend:

Bank A =

Individual B =

Individual C =

Date E =

Date F =

Date G =

Amount H =

Amount J =

Amount K =

Amount L =

IRA X =

IRA Y =

Dear

This is in response to your request dated on November 23, 2005, 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 January 10, 2006, and January 25, 2006, supplemented the request.

Under penalty of perjury, you have submitted the following facts and representations:

On Date E, 2005, you received Amount H from IRA X and Amount J from IRA Y. The amounts distributed from IRA X and IRA Y totaled Amount K. IRAs X and Y were maintained at Bank A. You withdrew the funds in order to purchase a new home under the first time home buyer exception of section 72(t)(8) of the Code. Individual B, a representative of Bank A told you that you had 120 days to roll over the withdrawn funds to another IRA.

On Date F, 2005, you redeposited Amount K into IRA Y. Individual B accepted the funds as a valid rollover contribution. Date F was within 120 days of the receipt of Amount K but more than 60 days from said date. On Date G, 2005, you received a letter signed by Individual C of Bank A Retirement Services informing you that the one time withdrawal rule limit applicable to a first time home purchase was \$10,000.00, and only that amount was eligible to be rolled over. You were told that Amount L was not eligible to be rolled over, and that such amount must be withdrawn from IRA Y. You first learned that you were in violation of the rollover requirements when you received the Date G, 2005, letter from Bank A. Amount L remains in IRA Y.

Documentation submitted as part of this request confirms that the information given to you by Individual B of Bank A was in error.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to your contribution of Amount L into IRA Y because the failure to waive such requirement would be against equity or good conscience.

With respect to your ruling request, 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 72(t)(8) of the Code extends the 60-day rollover period to 120 days with respect to qualified first-time homeowner distributions. However, this exception is limited to \$10,000.

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 you presented demonstrates that you attempted to affect a timely rollover of Amount K into an IRA, and, based on erroneous information given to you by a representative of Bank A, believed that you had done so. In short, you did not satisfy the 60-day rollover requirement with respect to Amount L because you reasonably relied upon information provided by the Bank A employee.

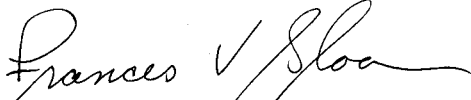
Accordingly, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount L. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met, the Date F, 2005, contribution of Amount L into IRA Y will be considered a rollover contribution 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 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 (***) ***-****. 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