

200624070



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

T:EP:RA:T3

Uniform Issue List 408.00-00

MAR 20 2006

Legend:

Company A =

Individual B =

Date E =

Date F =

Date G =

Amount H =

IRA X =

Account Y =

Dear

This is in response to your request dated on April 19, 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 24, 2006, and February 23, 2006, supplemented the request.

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

You maintained IRA X with Company A. On Date E, 2004, you withdrew Amount H from IRA X, and redeposited such amount in a non-IRA joint account (Account Y) with Company A. You withdrew the funds in order to reinvest Amount H in stock and option purchases. Your representative stated that you did this because IRA X could not invest in stock and option purchases. Account Y was a joint account which had been maintained by you and individual B as a non-IRA account since 2003. You state that you did not realize that Account Y was not an IRA. The 60-day rollover period ended on Date F, 2005.

In January 2005, when you received the 1099-R from Company A you realized that Account Y was not an IRA and that you had incurred a significant tax liability. On Date G, 2005 (after the 60 day period expired) you attempted to return Amount H to IRA X.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code, with respect to the distribution of Amount H from IRA X, because the failure to waive such requirement would be against equity or good conscience.

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.

You have not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected your inability to timely roll over Amount H, or any portion thereof, to an IRA. You have stated that you did not know that Account X was not an IRA. However documentation submitted by you and your authorized representative show that you maintained Account Y for over a year prior to transferring the funds to it from IRA X. There is no evidence to indicate that at any time prior to the transfer of funds that you believed this account to be an IRA. Nor is there any evidence that any one at Company A led you to believe that Account Y could accept funds as an IRA. The information submitted by you demonstrates that you are solely responsible for failing to timely deposit Amount H into an IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount A. Thus, Amount A will not be considered a valid rollover because the 60-day requirement under section 408(d)(3) of the Code with respect to such contribution will not be satisfied.

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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.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: