



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

20 0439046

JUL - 2 2004

Uniform Issue List: 408.00-00

SE. T. EP. RA. T3

Legend:

Company A =

Bank B =

Company C =

IRA X =

Dear

This is in response to a request dated May 12, 2004, submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3)(I) of the Internal Revenue Code (the "Code"). A letter dated June 25, 2004, supplemented the request.

Your representative has submitted the following facts and representations:

You had maintained IRA X with Company A. In IRA X had a value of \$. You have conducted business with Company C in the past and, as a result, received advertising material from Bank B, an affiliate of Company C, regarding favorable rates of return on individual retirement arrangements ("IRAs").

Upon receiving documents from Bank B regarding the rates of returns for IRAs you contacted a representative of that bank regarding rolling over of your funds from IRA

X to an IRA at Bank B. You discussed the mechanics of the transaction with the representative of Bank B.

Upon receiving the mailing address from Bank B as to where to send your distribution check from IRA X (for deposit in a rollover IRA at Bank B) you requested that Company A issue you a check for \$ _____ in order to roll over such funds into an IRA with Bank B, and you wished to receive the balance of \$ _____ as a taxable distribution. You received the check in the amount of \$ _____ on or about June 26,

Upon receiving such check you endorsed it to Bank B and sent it to them on June 30

You later received documents dated July 7, _____ reflecting investments in five certificates of deposits with Bank B. You believed that these certificates of deposit were IRA certificates. While preparing your tax documents, your authorized representative noted that Bank B did not establish an IRA for you.

The 60-day rollover period ended on or about August 25. _____ It is represented that the \$ _____ will be contributed to an IRA in your name within 60 days after a waiver is granted.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement 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 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 check that you received on or about June 26, _____ was intended to be rolled over into an IRA with Bank B. This is indicated by the discussions that you had with a representative of Bank B, and the fact that you sent the check to Bank B within the 60 day period allowed for rollovers. Also, none of the funds received by you has been used for any personal expenses.

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 amount from IRA X. Provided all other requirements of section 402(d) of the Code, except the 60-day requirement, are met with respect to such contributions, the contribution of \$ _____ into an IRA will be considered a rollover contribution within the meaning of section 408(d).

This ruling does not authorize the rollover of amounts, if any, 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.

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A copy of this ruling 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:T3.

Sincerely yours,


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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: