200709068

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

DEC 04 2006

T: EP: RA: T2

Legend:

Taxpayer A =

IRA X =

Property D =

Company C =

Bank B =

Bank F =

Account F =

Account G =

Individual M =

Dear

This is in response to your letter dated May 31, 2006, as supplemented by correspondence dated August 14, September 26, 2006, and November 1, 2006, submitted by your authorized representative, in which you request 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 penalties of perjury in support of your request.

Taxpayer A, maintained an individual retirement arrangement (IRA), with Company C. Taxpayer A states that, on October 31, 2002, he transferred property consisting of Property D from an IRA maintained by Company C to IRA X maintained by Bank B.

Taxpayer A states that he wanted sole control over his account but because of a misunderstanding caused, in part, by a language barrier, Bank B set up IRA X with control of the investment decisions by its Trust Division rather than by Taxpayer A. Upon discovering that he did not have sole control of the investment decisions of IRA X, on May 27, 2003, Taxpayer A requested that the IRA X assets, Property D, be transferred to a self-directed IRA brokerage account so that Taxpayer A would have sole control over the investment decisions.

Pursuant to Taxpayer A's request, on June 19, 2003, Bank B made an in-kind transfer of all of the property held in IRA X to Account F established with Bank F, a separate subsidiary of Bank B which he believed to be a self-directed IRA brokerage account but which in fact was a non-IRA account. Taxpayer A states that the purpose of the transfer was to permit the investment of IRA X into individual marketable securities through a licensed broker-dealer as directed by Taxpayer A rather than Bank B's Trust Division. Taxpayer A states that per his written instruction on May 27, 2003, he made his intentions known to the Bank F representative that he had intended to transfer IRA X to a self-directed IRA account but he was not provided with an IRA application. In addition, an inexperienced employee at Bank F did not provide the correct paperwork and set up the new account as a brokerage account.

While preparing Taxpayer A's 2004 tax return upon extension in 2005, the Taxpayer's accountant discovered that he had a large balance in a new account. The Accountant researched the account and discovered that this new account with Bank F was not established as an IRA account. The Accountant had not previously noticed this error because Form 1099-R was never issued by the Trust Division of Bank B and Taxpayer A did not bring this to his accountant's attention because Taxpayer A believed that he had properly executed a tax free rollover account with Bank F.

When the accountant notified Taxpayer A of the error, Taxpayer A immediately contacted Bank B and requested that the June 19, 2003 transaction be reversed and Property D be transferred back into his IRA. Bank F refused to transfer the money because more than 60 days had elapsed since the initial transfer occurred in June 2003.

In a letter dated September 26, 2006, Individual M, Assistant Vice President and Counsel of Bank F, verified the fact that the representative of Bank F opened the new account, Account G, a non-IRA account contrary to Taxpayer A's instructions and intentions and that Taxpayer A intended to open a self-directed IRA account. In addition, Individual M acknowledged the errors and omissions committed by both Bank B and Bank F.

Taxpayer A asserts that his failure to complete a rollover within the 60-day rollover period was due to Bank F's error in completing the necessary paperwork that resulted in Property D being deposited into a non-retirement account instead of an IRA as he intended. Taxpayer A further asserts that he has not used or withdrawn any of the Property D nor made any contribution in cash or in kind property since June 19, 2003.

Documentation and Account Statements submitted with the request support the above assertions made by Taxpayer A.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Property D from IRA X.

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 received 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 the time during the 1-year period ending in 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 included 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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 and the documentation submitted by Taxpayer A is consistent with his assertions that he failed to complete a rollover of Property D to an IRA within the 60-day rollover period because of the errors committed by both Banks B and F.

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 Property D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Property D to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Property D will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions regarding this letter, please contact
SE:T:EP:RA:T:2 at

Sincerely yours,

Frances V Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
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