



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

200532061

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 19 2005

UIC9100.00-00

SE. T. EP. PA. T 3

LEGEND:

Taxpayer A =

Company M =

IRA X =

Company N =

IRA Y Annuity =
Application

Bank O =

Bank P =

IRA Z =

Amount 1 =

Amount 2 =

Dear [REDACTED] :

On _____, you submitted a request for letter ruling to the Internal Revenue Service ("Service") in which you ask the Service to waive the 60-day rollover period requirement found in Section 408(d)(3)(A) of the Internal Revenue Code with respect to a distribution you received of an individual retirement annuity. Your ruling request, as supplemented by correspondence dated _____, asked the Service to reconsider Private Letter Ruling ("PLR") 200452047 issued to you on or about October 1, 2004, and provided additional facts in support of your request. This letter ruling, which modifies and revamps PLR 200452047, is based on the following facts and representations.

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Taxpayer A formerly maintained IRA X with Company M. On or about _____, 2004, Taxpayer A received a distribution of the full amount of his IRA X, Amount 1. The next day, _____, 2004, Taxpayer A completed an application for an individual retirement annuity, IRA Y Annuity Application, from Company N, in the amount of Amount 2. Amount 2 consisted of Amount 1 and of his calendar year 2003 IRA contribution. The annuity contract and accompanying information was delivered on _____, 2004, approximately a month later. Taxpayer A, after reading the contract, cancelled it the next day. The IRA Y annuity contract provides, in relevant part, that the customer has the right to return the policy or contract within the trial examination period which begins on the date the contract is received by the customer.

Approximately two weeks later, on or about _____, 2004, Taxpayer A received a check in the amount of Amount 2 from Company N evidencing his cancellation of the annuity contract that he had purchased from Company N. Approximately two weeks later, on or about _____, 2004, Taxpayer A mailed the check that he received from Company N to Bank P, a subsidiary of Bank O, to purchase a certificate of deposit, IRA Z. Documentation submitted by Taxpayer A with this request shows that he signed the IRA Z application form on _____, 2004, and that he deposited Amount 1 into IRA Z. Taxpayer A still maintains IRA Z with Bank P. Taxpayer A asserts that he failed to roll over Amount 1 into another IRA within the 60-day rollover period due to Company N's delay in refunding the proceeds after he cancelled the IRA Y Annuity Application.

In a letter dated _____, 2004, Taxpayer A requested reconsideration of the ruling (PLR 200452047) he received on October 1, 2004 based on a letter he received from Company N dated _____, 2004, in which Company n noted that the IRA Y annuity policy that was issued on _____, 2004 was withdrawn under the free look-provisions contained in the annuity contract within the trial examination period. The letter dated _____, 2004 signed by a representative of Company N also provided, in relevant part, that "...There is no binding contract between yourself and Company N. There is no Individual Retirement Account established with Company N. All funds have been returned to you". Furthermore, documentation dated _____, 2004 enclosed with the check Taxpayer A received from Company N on or about _____, 2004, also acknowledged that the pending IRA Y annuity contract was surrendered during the trial examination period per Taxpayer A's request.

Based on the above facts and representations, you request the following letter ruling:

That, pursuant to Code section 408(d)(3)(I) and Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), Taxpayer A's _____, 2004 contribution of the annuity proceeds he received from Company N on or about _____, 2004, to the extent said proceeds consisted of Amount 1 previously

distributed from IRA X, on or about _____, 2004, constituted a valid rollover contribution within the meaning of Code section 408(d)(3).

With respect to your ruling request, Code section 408(a) provides the general requirements which a trust must meet in order to constitute an individual retirement account (IRA).

Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(B) provides that this paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

Code section 408(d)(3)(I) provides, in relevant part, that the Secretary may waive the 60-day requirement under Subparagraph (A) where the failure to waive the 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.

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 402(c)(3)(B) of the Code or 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.

In this case, Taxpayer A received a distribution totaling Amount 1 from his IRA X on or about _____, 2004. The next day, _____, 2004, Taxpayer A completed an IRA Y Annuity Application with Company N evidencing an intent to purchase an IRA annuity contract in the amount of Amount 2 which consisted of Amount 1 and an amount equal to his permitted calendar year 2003 IRA contribution. No assertion has been made by Taxpayer A that his attempted purchase of IRA Annuity Y contravened the requirements of Code section 408.

Company N, by letter to Taxpayer A dated _____, 2004 and further in a letter to Taxpayer A dated _____, 2004, has confirmed that the contract was withdrawn by Taxpayer A on or about _____, 2004, under the free look provision during the trial examination period and that there was no IRA Account established with Company N by Taxpayer A. Since an IRA had not been established by Taxpayer A with Company N using Amount 1, Taxpayer A was eligible to make a tax-deferred rollover of that amount to another IRA provided the 60-day rollover requirement was satisfied.

Shortly after _____, 2004, on or about _____, 2004 (approximately two weeks later), Taxpayer A received a check from Company N in the amount of Amount 2 evidencing his cancellation of his attempted IRA Annuity Y purchase. Company N never issued Taxpayer A an IRA annuity contract. Taxpayer A subsequently used the check he received from Company N to purchase a certificate of deposit, IRA Z, from Bank P.

Taxpayer A asserts that he failed to roll over Amount 1 into another IRA within the 60-day rollover period due to Company N's delay in refunding Amount 2 to Taxpayer A after he cancelled the IRA Y Annuity Application. However, as supported by documentation submitted by Taxpayer A, and to evidence Taxpayer A's intent to maintain Amount 1 in a tax-deferred IRA account, Taxpayer A, on _____, 2004, used the check he received from Company N to establish IRA Z with Bank P. Amount 1 remains invested in IRA Z.

Subsequent to establishing IRA Z, Taxpayer A became concerned that he may have violated the one-year rollover rule found in Code section 408(d)(3)(B). In response to an earlier, _____, 2004, ruling request submitted by Taxpayer A, the Service, in PLR 200452047, concluded that he had.

With respect to the this requested ruling, Code section 408(d)(3)(I) and Rev. Proc. 2003-16 authorize the Service to extend the 60-day rollover period under certain circumstances. In this case, Taxpayer A was eligible to roll over into an IRA the check that he received from Company N to the extent the check totaled Amount 1 in that the

proposed rollover to IRA Y Annuity was never completed and no IRA established. However, said rollover had to have been accomplished within 60 days of _____, 2004. Taxpayer A did not comply with the 60 day rollover requirement primarily because of the length of time required for Company N to mail Taxpayer A the check which Taxpayer A then rolled over into IRA Z with Bank P.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the _____, 2004 distribution of Amount 1 from IRA X. As a result, Taxpayer A's placing Amount 1 into IRA Z with Bank P is deemed to have constituted a valid rollover contribution into an IRA defined in Code section 408(a). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contribution, said contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

By necessity, this letter ruling, based on additional information submitted by Taxpayer A, which concludes that his placing Amount 1 into IRA Z with Bank P is deemed to have constituted a valid rollover contribution into an IRA defined in Code section 408(a) also concludes that said rollover contribution did not result in a violation of the rule found in Code section 408(d)(3)(B) contrary to the Service's holding in PLR 200452047.

This ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs under section 408(a)(6) of the Code), if any.

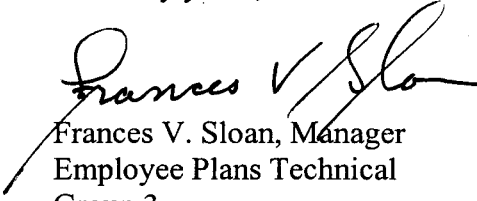
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto. Furthermore, no opinion is expressed as to whether the traditional IRA contribution made with respect to calendar year 2003 (referenced above) satisfies the requirements of Code sections 219(b) and 408(a).

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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If you wish to inquire about this ruling, please contact _____, I.D. #
at _____ (not a toll-free number). Please address all correspondence to
SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical
Group 3