

200523028



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 16 2005

UIC: 9100.00-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Advisor G:

Law Firm H:

Company S:

IRA X:

Account Y:

Amount 1:

Amount 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Trust T:

Trust Account
U:

Account V:

Dear [REDACTED] :

This is in response to the [REDACTED] letter, as supplemented by additional correspondence, in which you, through your authorized representative, request an extension of the 60-day rollover period found in section 408(d)(3)(A) of the Internal Revenue Code applicable to individual retirement accounts ("IRAs"). Your request is based on the following facts and representations.

Taxpayer A, whose date of birth was Date 1, 1938, owned IRA X, an individual retirement account ("IRA") set up and maintained in her name with Company S. On or about Date 6, 2003, Advisor G of Law Firm H advised Taxpayer A of the benefits of transferring her assets into a trust. On or about Date 2, 2003, Taxpayer A set up, as a grantor trust, Trust T. The provisions of Trust T indicate that Taxpayer A was the sole, initial, trustee of Trust T. Additionally, the Trust T provisions indicate that Taxpayer A "...may use the income and principal of the trust for any purpose, add assets to and withdraw assets from the trust, and amend or revoke the trust at any time in writing. While I (Taxpayer A) am the Trustee, I am authorized to manage the trust assets with all the authority I have over assets owned by me individually".

On or about Date 3, 2004, Taxpayer A authorized Company S to transfer her IRA X and her Account Y, a non-IRA account, into Trust Account U, a non-IRA account. On or about Date 4, 2004, said transfer(s) were accomplished. The documentation which accompanied this letter ruling request indicates that the property transferred from IRA X to Trust Account U consisted of stocks, bonds and assets held in a money market mutual fund account (Account V) having a value of approximately Amount 1.

The current value of the assets distributed out of IRA X on or about Date 4, 2004 is approximately Amount 2.

On or about Date 5, 2004, which was approximately 18 days after Date 4, 2004, Taxpayer A, by means of written correspondence to Company S, questioned the

Date 4, 2004, transfer(s) to the extent the transfer(s) involved IRA X. In said Date 5, 2004, correspondence Taxpayer A indicated that she did not want to commingle the assets in IRA X with the assets in Account Y. Additionally, Taxpayer A indicated that she realized the transfer of IRA X to Trust Account U subjected her to federal taxation, and that she did not wish to pay taxes on the amounts transferred out of IRA X. Finally, she indicated that she wanted Amount 1 (the amount of the IRA X assets) transferred into a separate account eligible to hold IRA assets. Taxpayer A's instructions were not followed by Company S.

As of the date of this ruling request, the assets of IRA X remain in Trust Account U and have not been transferred to or rolled back into another IRA.

The 60-day rollover period applicable to Taxpayer A's withdrawal of Amount 1 from her IRA X expired on Date 7, 2004.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement found in section 408(d)(3)(A) of the Internal Revenue Code ("Code") with respect to the distribution of Amount 1 from IRA X because the failure to waive such requirement would be a hardship and 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.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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.

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 information presented on behalf of Taxpayer A demonstrates that the failure of Taxpayer A to make a rollover contribution of Amount 1 distributed from IRA X to either IRA X or another IRA within 60 days of receiving Amount 1 was due to Company S's failing to follow Taxpayer A's written instructions to do so.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount 1. Pursuant

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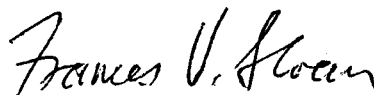
to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of the property (stocks and bonds and shares of Account V) distributed from IRA X to another IRA set up and maintained in her name. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of amounts required to be distributed, 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.

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 [REDACTED] (phone-not a toll-free number), or [REDACTED] (FAX). Please address any correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose