

INTERNAL Revenue Service

Uniform Issue List: 408.03-00

200616043

JAN 24 2006

Legend:

T: EP: RA: T3

IRA X =

Company A =

Amount B =

Bank C =

Company D =

Amount E =

Amount F =

Amount G =

Dear :

This is in response to your request dated May 21, 2005, as supplemented by correspondence dated December 15, 2005 and January 6, 2006, submitted on your behalf by your authorized representatives, 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 penalty of perjury in support of the ruling requested:

You are years old. On , due to disability, you retired from employment. You received a lump sum payment from your retirement plan with your former employer which you rolled over into an Individual Retirement Arrangement (IRA), IRA X, with Company A. You continue to be treated by your doctor for chronic pain due to your disability, including medication which has rendered you bedridden. Due to your medical condition, it is very difficult for you to remember to follow up on many financial details. For this reason, you rely on your financial advisors to manage your investment accounts.

In , your long-time financial advisor with Company A moved to another state. Due to this, you decided to find another financial advisor and requested a distribution of your

account balance in IRA X. On _____, you received Amount B, which was a total distribution from IRA X. On _____, you deposited Amount B into your checking account at Bank C while you decided how to invest this IRA distribution. Through a mutual acquaintance, you were introduced to a financial advisor at Company D. On _____, you sent a check from your checking account with Bank C for Amount E to the financial advisor at Company D. You kept Amount F, which was the difference between the IRA X distribution of Amount B and the Amount E check sent to Company D, for personal purposes.

Since the financial advisor did not realize that the source of Amount E was an IRA, he did not establish an IRA with these funds. Instead, he assumed that Amount E was non-IRA funds without asking about its source. Due to this, the financial advisor at Company D established a non-IRA with Amount E.

You were bedridden during and after the 60-day rollover period. Your physical and mental state has left you unable to effectively manage your finances. You rely upon others to assist you with your personal and financial affairs. Due to your ill health, as well as your limited financial and tax knowledge, you assumed that Amount E had been rolled over to another IRA. You were not aware that this had not been accomplished until you received a letter from the Internal Revenue Service, dated _____, stating that you were required to file a Federal income tax return for _____. Previously, your tax accountant had advised you that your taxable income for _____ was not sufficient to warrant the filing of a Federal income tax return for that year.

You have never personally met with the financial advisor at Company D. The paperwork to open the account with Company D was sent by mail and you signed and returned the documents with your check to the financial advisor by mail. It was always your intent to have the same type of retirement account with Company D as you had maintained with Company A.

Since _____, you have been receiving monthly distributions from the non-IRA account with Company D. These monthly distributions have averaged about Amount G each month. Your account balance in the non-IRA account with Company D is an amount in excess of Amount E.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount E, contained in section 408(d)(3) of the Code in this instance.

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 one-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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6). Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) 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) 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.

The information you presented and the documentation you submitted is consistent with your assertion that your failure to accomplish a timely rollover was caused by your disability, which caused you to be bedridden during and after the 60-day rollover period. Although it was always your intent to have the same type of retirement account with Company D as you had maintained with Company A, due to your chronic disability you were unable to follow up to make sure that the financial advisor had properly rolled over Amount E to another IRA. Due to your limited financial and tax knowledge, you assumed that Amount E had been rolled over to another IRA.

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 Amount E. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount E into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code,

except the 60-day requirement, are met with respect to such contributions, Amount E will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

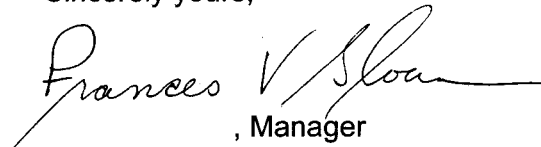
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact . 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 letter ruling
- Notice of Intention to Disclose