

OCT 25 2006

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

IRA X =

Plan Y =

Amount A =

Amount B =

Amount D =

Medical Doctor C =

County Employer S =

Dear

This is in response to your request dated \_\_\_\_\_ and as supplemented by a letter dated \_\_\_\_\_ in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) and section 402(C)(3)(A) 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

Taxpayer A, 60, represents that he received a distribution of Amount A from IRA X and Amount B from Plan Y totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the effects of grief over a close friend's death. Taxpayer A asserts that Amount D was not used for any other purpose.

The documentation submitted shows that Taxpayer A, retired from County Employer S and withdrew Amount B from Plan Y on \_\_\_\_\_, and Amount A from IRA X on August 22, 2005, totaling Amount D.

Taxpayer A signed a distribution request concerning Amount B from Plan Y on \_\_\_\_\_ which included a notice that 20 percent mandatory federal withholding would apply unless Taxpayer A elected a direct transfer to an IRA and which acknowledged that he had received and reviewed the Special Tax Notice Regarding Plan Payments. After receiving news of a close friend's death on \_\_\_\_\_ in \_\_\_\_\_ Taxpayer A asserts he was unable to function because of his grief over his friend's death and he failed to roll over Amount D within the 60-day period. Taxpayer A provided documentation from Medical Doctor C that on \_\_\_\_\_ Taxpayer A presented dizziness, lightheadedness, nausea, memory lapses, and was having trouble sleeping. Medical Doctor C wrote that Taxpayer A began these symptoms two weeks prior to \_\_\_\_\_ Taxpayer A was prescribed certain medication for the condition. Taxpayer A became aware that Amount D could have been rolled over into an IRA rollover account during a conversation at a friend's party on \_\_\_\_\_, but Taxpayer A did not attempt to rollover Amount D. Subsequently Taxpayer A wrote to the Service for assistance on \_\_\_\_\_

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 A contained in section 408(d)(3) of the Code and Amount B contained in section 402(C)(3)(A) of the Internal Revenue Code ("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 60<sup>th</sup> 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)(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 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.

With respect to the distribution of Amount B, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs. Section 402(c)(1) provides, generally, that if any portion of an eligible rollover distribution from a qualified employees trust is paid to an employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) 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 402(c)(3)(B) of the Code.

Section 457(e)(16)(A) of the Code provides, in relevant part, that if any portion of the balance to the credit of an employee in such plan is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4), the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an eligible retirement plan described in section 402(c)(8)(B) of the Code, then such distribution (to the extent so transferred) will not be includible in the gross income of the employee in the taxable year that the distribution is paid.

Section 457(e)(16)(B) provides that rules similar to rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of section 457(e)(16)(A).

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) and 402(c)(3)(B), 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 and documentation submitted by Taxpayer A indicates that Taxpayer A signed a distribution request concerning Amount B from Plan Y on August 8, 2005, which included a notice that 20 percent mandatory federal withholding would apply unless Taxpayer A elected a direct transfer to an IRA and that included a standard notice about seeking tax advice concerning the distribution from Plan Y. Approximately 45 days later, Taxpayer A's close friend died unexpectedly. However, prior to the death of his friend, Taxpayer A took no steps to implement a rollover. Taxpayer A asserts his failure to accomplish a timely rollover was caused by medical problems he was having because of his grief over a friend's death. Taxpayer A has provided documentation from Medical Doctor C regarding his treatment. The medical documentation indicates that "patient was anxious and withdrawn but oriented in time, place, and person".

We do not believe that Taxpayer A has presented sufficient documentation to conclude that any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over Amount A.

Thus, the Service will not grant any extension to the 60-day rollover period of Code section 408(d)(3)(A) nor section 457(e)(16)(A) in this case.

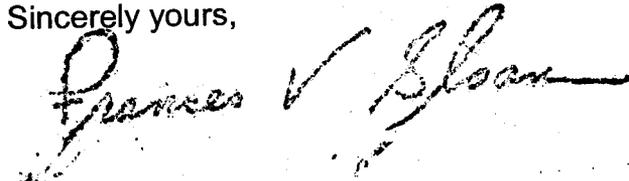
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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  
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