



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200445031

AUG 10 2004

SE: T. EP: RA: T3

Uniform Issue List: 408.03-00

Legend

Taxpayer A = ***

IRA B = ***

Account C = ***

Account D = ***

Transfer Agent E = ***

Trustee F = ***

Amount G = ***

Dear ***:

This is in response to your letter dated April 23, 2004, supplemented by faxed information dated June 21, 2004 and July 30, 2004, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Prior to January , Taxpayer A maintained IRA B, an individual retirement arrangement ("IRA") described in Code section 408(a), in her name. Trustee F was the Trustee for IRA B where it was held in a government money market

fund. In the past, Taxpayer A had limited knowledge of the existence of IRA B as her financial affairs were handled entirely by her spouse.

On approximately December 10, , Taxpayer A's spouse was hospitalized for heart surgery. During the following four months, Taxpayer A's spouse was only able to return home for a few days and was unable to handle any affairs. Without Taxpayer A's knowledge (but possibly with Taxpayer A's spouse's prior consent), Trustee F closed IRA B and sent a liquidation check for Amount G to Taxpayer A's home through Transfer Agent E. This liquidation check was addressed to Taxpayer A IRA and was dated January 20, .

Taxpayer A did not discover the check until March 23, , and does not know when the check was received in her home. Prior to March 23, Taxpayer A expected her spouse to return home and resume handling their financial affairs. However, on that date, Taxpayer A realized that her spouse's condition was deteriorating and that he would not be returning home due to the advanced state of his illness. Furthermore, she also realized that she needed to provide the necessary information to their tax preparer to enable him to file their income tax returns. Being unaware of the circumstances surrounding the issuance of the January 20, , check, and unable to discuss the check with her husband due to his incapacity, Taxpayer A deposited the check into Account C on March 23, . On April 26, , Taxpayer A moved the amount deposited into Account C on March 23, into Account D for the purpose of keeping these funds separate from other funds.

Taxpayer A represents that she was not familiar with Transfer Agent E which unfamiliarity contributed to her not discovering the January 20, check until March 23, . Furthermore, she represents that she had limited expertise with the 60-day rollover requirement and, with respect to the January 20, check, believed that the 60-day period began to run as of the date of check.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount G from IRA B, because the failure to waive such requirement would be against equity or good conscience.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA should 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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.

Rev. Proc. 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 by Taxpayer A demonstrates that Taxpayer A did not timely roll over the check dated January 20, payable to Taxpayer A IRA because she did not discover it until March 23, a date that she believed was beyond the 60 day rollover period. Taxpayer A's failure to timely roll over was caused by the serious medical condition of her spouse which resulted in his death on April 24, and her unfamiliarity with the family finances. The distribution check was not cashed until it was discovered and deposited on March 23, . The funds have not been used or spent, and the request for this ruling was made within one month from the date on which the check was discovered.

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 G. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount G 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, said contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

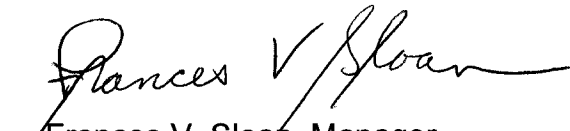
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs under section 408(a)(6) of the Code), if any.

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.

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 ***, I.D. #***, at ***.
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 this letter
Notice of Intention to Disclose, Notice 437