

200451039



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

SEP 24 2004

Uniform Issue List: 408.03-00

SE.T. EP- RA.T3

Legend:

Amount D =

Amount E =

Credit Union F =

IRA X =

IRA Y =

Dear

This is in response to a request submitted by you and your authorized representative by letter dated June 30, 2004, for a ruling to waive 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:

You have maintained IRA X and IRA Y with Credit Union F as custodian. IRA X contained amount D and IRA Y contained Amount E. On April 2, [REDACTED] you transferred Amounts D and E to a money market account with Credit Union F with the intent to roll over the funds into an individual retirement arrangement. You calculated that the 60-day rollover period would end on May 28, [REDACTED].

You have been diagnosed with chronic irritable bowel syndrome ("IBS") which causes severe abominable pain, nausea and vomiting. An IBS attack is unpredictable, and can occur without warning and can be of indefinite duration. When an attack occurs, you cannot work or function normally. These attacks have caused you to be hospitalized three times and you have had two major surgeries of your abdomen.

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On the evening of May 27, [REDACTED], you began to experience an IBS attack. The pain and nausea continued until May 29, [REDACTED]. During this attack, you did not have the capacity to go to Credit Union F and conduct the business necessary to roll over your IRAs.

On June 1, [REDACTED], you called Credit Union F and were told that, due to the Memorial Day holiday, the deadline for rolling over your IRAs was [REDACTED]. However, the actual date for rolling over the funds was June 1, [REDACTED]. You contacted Credit Union F again on June 4, [REDACTED] and were told that you could not redeposit the funds because the 60 day period had expired. The funds have remained in a money market fund in Credit Union F during this time.

On June 17, [REDACTED] you contacted a specialist in tax matters whom advised you to seek a waiver of the 60-day rollover period.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amounts D and E, 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.

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.

Section 408A of the Code and sections 1.408A-1 through 1.408A-9 of the Income Tax Regulations provide the rules governing Roth IRAs. Section 408A(e) of the Code provides that the term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA. Section 1.408A-1 of the Regulations, Question and Answer- 1(c), provides that a amount distributed from a Roth IRA will not be included in gross income to the extent it is rolled over to another Roth IRA on a tax-free basis under the rules of sections 408(d)(3) and 408A(e).

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 by you demonstrates that you had intended to roll over Amount D and Amount E within the 60-day period proscribed by section 408(d)(3)(A) of the Code, but that you were misinformed by Credit Union F as to when the 60 day period expired. The information also shows that you are under a doctor's care for a chronic disease which can cause severe pain at indiscriminate times, and that you had such an attack just as the 60 day rollover period was ending. Furthermore, it shows that you have attempted to roll over Amounts D and E into an IRA. However, such attempt to "rollover" was outside the requisite 60-day period. The information presented indicates that the reason for the failure to comply with the 60-day requirement was the severe IBS attack you had just before the 60-day period expired. Finally, this request for a letter ruling was submitted shortly after the 60-day period expired and you discovered that you failed to comply with the requirements of section 408(d)(3) of the Code.

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 D from IRA X and Amount E from IRA Y. You are granted a period of 60 days from the

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issuance of this ruling letter to complete the rollover of Amount D and Amount E. Provided all other requirements of sections 408A and 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the amounts deposited into and IRA, will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code

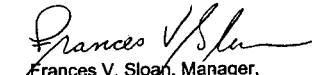
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter 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 **** (ID **) at (**) **-. Please address all correspondence to SE:T: EP:RA:T3.

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

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

CC: