

Uniform Issue List: 408.03-00

OCT 28 2004

Legend:

IRA X =

IRA Y =

Amount A =

Dear Mr. :

This is in response to correspondence dated June 8, 2004, as supplemented by correspondence dated August 17, 2004, submitted on your behalf by your authorized representative, in which you requested 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 have advanced Parkinson's disease which makes it difficult for you to communicate, either verbally or in writing. In addition, due to this disease, you have poor eyesight which makes it very difficult to read. You are currently receiving 24-hour a day nursing care. Due to these difficulties, you moved to another state so that your daughters could help with your care.

During this move, you requested a distribution from IRA X. On November 25, 2002, you received a distribution from IRA X. The amount of the distribution was Amount A. You were unable to read any information sent to you regarding the taxability of your IRA X distribution. You placed Amount A into a checking account which you maintained at a bank. Your intention was to place Amount A into a Rollover IRA which would be established with a different investment company.

When your authorized representative met with a tax preparer in February 2003 to discuss the preparation of your Federal income tax return for [REDACTED], your tax preparer informed your representative of the taxability of the distribution from IRA X. Due to this, your authorized representative initiated proceedings to place Amount A into a Rollover IRA. To that effect, Amount A was withdrawn from the checking account at the bank and deposited into IRA Y on April 25, 2003. During the time that Amount A was held in the checking account, no amounts were withdrawn or used for any purposes.

You were not aware that the distribution of Amount A from IRA X would be taxable. In addition, you did not know that there was a 60-day rollover requirement for Amount A to be rolled over into a Rollover IRA.

Based on these facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code regarding Amount A.

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)(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 demonstrates that your disability prevented you from timely placing Amount A into a Rollover IRA. Because of your inability to communicate your intent, your diminished eyesight, and your lack of knowledge of the 60-day rollover requirement, you were unable to properly communicate and understand the necessity to roll over your distribution from IRA X on a timely basis.

Therefore, the April 25, 2003 rollover into IRA Y, described above, is deemed to have been timely made within the meaning of section 408(d)(3)(A) of the Code. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such rollover contribution, the April 25, 2003 contribution of Amount A into IRA Y will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6).

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 IRA X or IRA Y 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 ruling letter
Notice of Intention to Disclose