

200537040



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

COMMISSIONER

JUN 21 2005

UIC: 408.02-01  
408.03-00

*T:EP:RA:T3*

**LEGEND:**

Taxpayer A:

Bank U:

City E:

State F:

IRA X:

Company T:

Amount 1:

Amount 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Month 1:

Dear Ms. :

This is in response to the  
correspondence dated

letter, as supplemented by  
, in which you request an extension of the 60-

day rollover period found in section 408(d)(3)(A) of the Internal Revenue Code ("Code") applicable to individual retirement accounts ("IRAs"). Your request is based on the following facts and representations.

On \_\_\_\_\_ (hereinafter "Date 1") Taxpayer A opened IRA X with Bank U, located in City E, State F, and made a contribution in the amount of Amount 1 with respect to calendar year \_\_\_\_\_. As a result of the contribution, IRA X held a certificate of deposit that matured on \_\_\_\_\_ ("Date 2") \_\_\_\_\_.

On \_\_\_\_\_ ("Date 3") Taxpayer A advised Bank U, in writing, that she wished to receive the proceeds from her IRA X in order to roll over said proceeds into another IRA she maintained with Company T. Although Bank U maintains it mailed a check in the amount of Amount 2 (Amount 1 plus earnings) to Taxpayer A during \_\_\_\_\_ ("Month 1") \_\_\_\_\_ Taxpayer A has asserted, in written correspondence to the Internal Revenue Service ("Service"), that said check was never received. In this regard, documentation attached to this ruling request includes a "Traditional IRA Distribution Form" completed by an agent of Bank U in response to Taxpayer A's Date 3 \_\_\_\_\_ letter, which lists the IRA X owner as someone with a name other than Taxpayer A's, and provides no mailing address.

On or about \_\_\_\_\_ ("Date 4") Taxpayer A received a Form 1099-R issued by Bank U showing a distribution from IRA X in the amount of Amount 2. In response to a subsequent inquiry from Taxpayer A, Bank U noted that its records indicated the check "sent" to Taxpayer A during Month 1 \_\_\_\_\_ had never been cashed. On or about \_\_\_\_\_ ("Date 5") Bank U issued a replacement check in the amount of Amount 2 to Taxpayer A. Said check was then deposited by Taxpayer A in a non-tax preferred (non-IRA) account where it remains.

Taxpayer A's ruling request is dated \_\_\_\_\_ ("Date 6") \_\_\_\_\_ which date lies within 60 days of Date 5 \_\_\_\_\_. Taxpayer A has asserted, in writing to the Service, that she believed the 60-day IRA rollover period began the date, in Month 1 \_\_\_\_\_ that Bank U maintains it initially mailed a check to Taxpayer A. As a result, since Date 5 \_\_\_\_\_ occurred beyond the 60-day period measured from the last day in Month 1 \_\_\_\_\_ she was not authorized to roll over the proceeds of the Date 5 \_\_\_\_\_ check until she had received a letter ruling from the Service permitting her to do so.

Taxpayer A was born in \_\_\_\_\_.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement found in section 408(d)(3)(A) of the Internal Revenue Code ("Code") with respect to the distribution of Amount 2 from IRA X.

With respect to your ruling request, 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.

Code section 408(a)(6) provides, in general, that rules similar to the

rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

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.

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 Taxpayer A demonstrates that the failure of Taxpayer A to make a rollover contribution within 60 days of receiving Amount 2 from IRA X was primarily due to her not receiving the check mailed by Bank U to her during Month 1 \_\_\_\_\_ which failure stems, at least partly, from Bank U's records listing an individual as the owner of IRA X who did not share her name, and from Bank U's not listing Taxpayer A's correct address on the IRA X distribution form. When Taxpayer A received a replacement check in \_\_\_\_\_ she did not contribute said check to another IRA because she believed that the 60 day rollover period was measured from the date Bank U mailed her the first check which occurred during Month 1 \_\_\_\_\_. Said replacement check remains unspent.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount 2 from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount no greater than Amount 2 to another. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

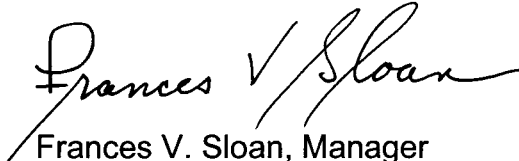
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 \_\_\_\_\_, Esquire, (I.D. # \_\_\_\_\_ -

\_\_\_\_\_, at \_\_\_\_\_ (phone-not a toll-free number), or \_\_\_\_\_

\_\_\_\_\_. Please address any correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose