

*INTERNAL REVENUE SERVICE*

**200540021**

**JUL 12 2005**

Uniform Issue List: 408.03-00

*SE: T: EP: PA: T3*

Legend:

Individual A =

Individual B =

IRA X =

IRA Y =

Bank M =

Company N =

Company O =

Amount A =

Amount B =

Date A =

Date B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear [REDACTED]

This is in response to correspondence dated March 10, 2005, as supplemented by correspondence dated June 6 and 23, 2005, 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:

Individual A and Individual B are husband and wife. Individual A's date of birth was Date A and Individual B's date of birth was Date B. Individual A maintained an Individual Retirement Arrangement (IRA), IRA X, with Bank M. Individual B maintained an IRA, IRA Y, with Bank M. IRA X and IRA Y were invested in certificates of deposit which matured on Date 1. On Date 2, Amount A was distributed from IRA X and mailed to Individual A, and Amount B was distributed from IRA Y and mailed to Individual B. Individual A and Individual B intended to roll over these IRA distributions into new IRAs which they intended to establish at Company N, formerly known as Company O. When they attempted to execute the rollovers, a staff member at Company N told them that they could not roll over distributions from an IRA into an IRA funded with a certificate of deposit. They were confused by this information since they had always used certificates of deposit as the investment medium for their IRAs. They were advised by the Company N staff member to determine the proper rules for a rollover. The distributions from IRAs X and Y were deposited into savings accounts at a local bank on the following day, Date 3.

On Date 4, Individual B was informed by a doctor that immediate surgery was needed to prevent permanent loss of the nerve in her dominant hand. During the following weeks, Individual B attempted to locate a reputable doctor to perform the necessary surgery and performed research on her condition. On Date 5, she went to see another doctor who reiterated that surgery should be performed as soon as possible and that the soonest date available for the surgery was Date 6. Surgery was performed on Date 6 followed by a long period of convalescence and rehabilitation.

In addition to the health problems of Individual B, Individual A has also suffered from conditions which required the treatment and care of doctors at a hospital which is more than 60 miles away from Individual A's and Individual B's home. These trips were time consuming and made it

difficult to take the proper actions to successfully roll over the IRA distributions. Individual A receives Social Security disability payments.

On Date 7, Individuals A and B wrote a letter to the Service concerning the expiration of the 60-day rollover period. In that letter, Individuals A and B explained that due to Individual B's illness, necessity for surgery, and period of convalescence and rehabilitation, the distributions from their IRAs were not rolled over within the 60-day rollover period. In this correspondence, they request that the 60-day rollover period be extended. In correspondence dated Date 8, the Service responded by advising Individuals A and B to resubmit their extension requests after their 2004 Federal tax return had been processed and that no further action could be taken until then.

Amount A and Amount B are being held in a non-IRA account at a credit union and no part of the distributions from IRAs X or Y has been used for any purpose.

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 and Amount B.

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 60<sup>th</sup> 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 Individual A and Individual B communicated their intent to a representative of Company N that they wanted to roll over Amount A and Amount B into IRAs. They relied on that Company N representative to provide them with correct information regarding this transaction. Instead, the representative provided them with incorrect information and shifted the burden of researching this transaction onto Individuals A and B. Their attempt to obtain assistance from the Service shortly after the expiration of the 60-day rollover period was unsuccessful. Further, Individual A's and Individual B's medical conditions and the resulting necessary treatments, surgery, convalescence and rehabilitation prevented them from timely obtaining correct information on IRA rollovers and timely placing Amount A and Amount B into Rollover IRAs.

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 A and Amount B (less amounts described below). Individual A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A (less amounts described below) into a Rollover IRA, and Individual B is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B (less amounts described below) into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A and Amount B will be considered rollover contributions 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 and IRA Y described herein satisfied the requirements of section 408 of the Code.

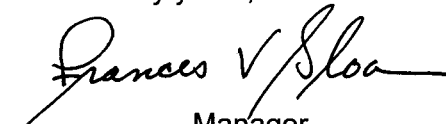
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This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

If you wish to inquire about this ruling, please contact \_\_\_\_\_, I.D. \_\_\_\_\_, at \_\_\_\_\_.  
Please address all correspondence to \_\_\_\_\_.

Sincerely yours,

  
\_\_\_\_\_, Manager

Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose