

INTERNAL REVENUE SERVICE

200544031

Uniform Issue List: 408.03-00

AUG - 8 2005

SE. T. EP. RA. T3

Legend:

Bank A =

IRA X =

Amount B =

Bank C =

Dear :

This is in response to correspondence dated March 30, 2005, as supplemented by correspondence dated June 27 and July 8, 2005, 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).

Under penalty of perjury, you have submitted the following facts and representations in support of the ruling requested:

You sold your house and intended to move into a new house in another town which was approximately an hour and a half drive from your old house.

On or about December 9, 2004, you received a distribution from your Individual Retirement Arrangement (IRA), IRA X, which was maintained in Bank A. The amount of the distribution was Amount B. Your intent was to roll over the IRA X distribution into another IRA maintained at a bank closer to your new house. On December 10, 2004, you went to Bank C with the purpose of establishing an IRA and rolling over Amount B into that IRA. On the distribution check which you received from IRA X you wrote "to retirement account Bank C". There was no information printed on the check which indicated that the funds were distributed from an IRA. When you left Bank C, you thought that you had rolled over your IRA X distribution into another IRA and that no further action was necessary. When your income taxes for [REDACTED] were prepared, your tax preparer informed you that Amount B had not been rolled over into an IRA. You discovered that Amount B was being held in a passbook savings account with Bank C. During the time that Amount B was held in the savings account, no amounts were withdrawn or used for any purposes. You are 94 years old and were under stress from

your impending move. In addition, you suffered from knee pain and sciatica and wear a hearing aid.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code in this instance.

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.

You are 94 years old and during the 60-day rollover period were under stress from your impending move. In addition, you suffered from knee pain and sciatica and wear a hearing aid. Your intent was to roll over the IRA X distribution into another IRA maintained at Bank C, which was closer to your new house. To this end, you wrote "to retirement account Bank C" on the distribution check from Bank A. In your meeting with the Bank C representative, you thought that you had accomplished a rollover to an IRA, and you believed that the notation on your check was sufficient to convey said intent to the Bank C representative. When your tax returns were prepared, you were informed that Amount B was not rolled over into an IRA with Bank C. You discovered that Amount B was being held in a passbook savings account with Bank C. During the time that Amount B was held in the savings account, no amounts were withdrawn or used for any purposes.

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 B. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount B 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 B 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).

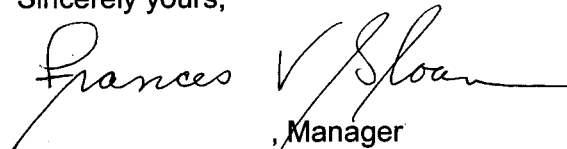
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter expresses no opinion as to whether the IRA 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.

If you wish to inquire about this ruling, please contact _____, I.D. # _____, at (not a toll-free number). Please address all correspondence to _____.

Sincerely yours,


_____, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose