



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

AUG 16 2005

Uniform Issue List 408.03-00

Legend

Taxpayer A	=	***
Taxpayer B	=	***
Amount C	=	***
Amount D	=	***
Amount E	=	***
Amount F	=	***
Amount G	=	***
Amount H	=	***
Amount I	=	***
Percentage 1	=	***
Bank F	=	***
Plan Administrator G	=	***
IRA X	=	***
Plan Y	=	***

Dear \*\*\*:

This is in response to your letter dated January 15, 2005 supplemented by faxed information dated May 5, 2005, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3)(A) 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:

Taxpayer A, whose date of birth was \*\*\*, died on \*\*\* without having attained age 70 1/2. Taxpayer B is Taxpayer A's surviving spouse and was the sole primary designated beneficiary of Taxpayer A's interest in Plan Y. On September 30, 2003, Taxpayer B received a distribution in the form of a lump sum payment totaling Amount C from

Taxpayer A's account in Plan Y. Plan Administrator G advised Taxpayer B that she could roll over the distribution to an IRA in order to defer any tax liability. The distribution of Amount C was paid directly into IRA X, an IRA set up and maintained in the name of Taxpayer B, with Bank F. It has been represented that IRA X was and/or is an individual retirement account ("IRA") described in Code section 408(a).

In March of 2004, while reviewing Taxpayer B's tax information that included a Form 1099-R (original), Taxpayer B's accountant informed Taxpayer B to verify the taxability of the distribution because the Form 1099-R indicated that only Amount D was taxable. Prior to April 15, 2004, a representative from Plan Administrator G verified that, consistent with the Form 1099-R, Amount D was the taxable portion of the Plan Y distribution.

On or about April 14, 2004, based on advice from Taxpayer B's accountant, Taxpayer B received a distribution from IRA X, totaling Amount E, which included Amount C and Amount F, earnings thereon, and deposited this amount into a checking account. Taxpayer B requested proper written documentation from Plan Administrator G to support the data on the original Form 1099-R.

Amount D is approximately Percentage 1 of Amount C. Amount G represents the portion of Amount F attributable to Amount D, the amount originally believed to be the taxable portion of Amount C. Amount D and Amount G total Amount H.

On \*\*\*, \*\*\* days after the expiration of the 60-day rollover period prescribed in section 408(d)(3)(A) of the Code applicable to the distribution from IRA X, a different representative from Plan Administrator G told Taxpayer B and [REDACTED] accountant that the distribution from Plan Y, totaling Amount C, was fully taxable.

On \*\*\* Taxpayer B's accountant received a fax which included a corrected 1099-R from Plan Administrator G, which had all of Amount C as being taxable as well as a letter indicating the prior Form 1099-R was incorrect.

After receipt of the corrected Form 1099-R from Plan Administrator G, Taxpayer B attempted to place Amount E back into IRA X for the purpose of maximizing [REDACTED] tax deferral, but was told by Bank F that it would not allow funds back into IRA X until receiving an indication from the Internal Revenue Service that the rollover period had been extended.

Upon receiving a letter ruling granting a waiver of the 60-day rollover requirement, Taxpayer B will promptly deposit Amount E into an IRA set up and maintained in Taxpayer B's name.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount E, because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA should 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)(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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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 1.402(c)(2) of the Income Tax Regulations, Question and Answer 16, provides, generally, that a rollover from a qualified plan to an individual retirement account is not treated as a rollover contribution for purposes of the one-year look back rollover limitation contained in Section 408(d)(3)(B) of the Code.

Rev. Proc. 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.

As evidenced by Taxpayer B's initial rollover into IRA X, the information presented demonstrates that Taxpayer B intended to roll over the taxable portion of Plan Y distribution. In respect thereto, Taxpayer B's accountant, relying upon a Form 1099-R received by Taxpayer B from Plan Administrator G, erroneously advised Taxpayer B that

Amount D was the taxable portion of Amount C. Relying on the Form 1099-R and the discussion with her accountant, on approximately April 14, 2004, Taxpayer B withdrew Amount E from IRA X and deposited the distributed amount in a checking (non-IRA) account. Taxpayer B did not receive notification that Amount C was fully taxable until \*\*\*. By this time the 60-day rollover period had expired. Sometime after receiving the corrected Form 1099-R on \*\*\*, Taxpayer B attempted to redeposit Amount E back into an IRA with Bank F. However, Taxpayer B was precluded from accomplishing this by Bank F, which insisted on Taxpayer B's obtaining a private letter ruling from the Service.

Therefore, based on the above facts, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to a portion of the distribution of Amount E from IRA X. Taxpayer B is granted a period of 60 days from the date of this ruling letter to redeposit an amount not to exceed Amount I into either IRA X or a new IRA set up in Taxpayer B's name. Amount I represents Amount E less Amount D (the portion of the distribution which Plan Administrator G indicated was taxable in the originally incorrect Form 1099-R) and Amount G (the interest accrued on Amount D).

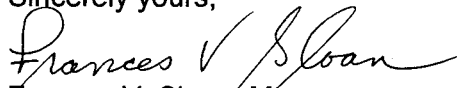
Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of an amount (not to exceed Amount I) into an IRA in Taxpayer B's name will be considered a rollover contribution within the meaning of section 408(d)(3) 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 \*\*\* at either \*\*\* or \*\*\*. 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 this letter  
Notice of Intention to Disclose, Notice 437