

INTERNAL REVENUE SERVICE

200608034

DEC - 1 2005

Uniform Issue List: 408.03-00

SET:EP:RA:T3

Legend:

Taxpayer A =

Decedent B =

Individual G =

Attorney H =

Amount D =

IRA X =

IRA Y =

Company A =

Dear [REDACTED]

In letters dated August 17, 2004, June 16, 2005, and October 25, 2005, your authorized representative on your behalf 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:

Taxpayer A was married to Decedent B. Decedent B died on [REDACTED], having named Taxpayer A as beneficiary of IRA X. IRA X was liquidated on November 3, 2003, by Individual G, who, your authorized representative has asserted, was purporting to act as Taxpayer A's agent under a durable Power of Attorney but who was without

authority under State N law to act as such. Taxpayer A was not told of the liquidation of IRA X.

On November 10, 2003, Taxpayer A's attorney, Attorney H, received a check for Amount D from Company A, manager of Taxpayer A's trust and the Company to which Individual G had delivered the liquidated IRA funds. However, Attorney H never received a description of the nature of the Amount D funds and had no knowledge that these were IRA funds. Attorney H deposited Amount D into an account on behalf of Taxpayer A. Taxpayer A did not become aware of the liquidation of IRA X until her tax preparer notified Attorney H. Attorney H immediately arranged a rollover of the IRA X proceeds in Amount D, minus the year [REDACTED] minimum required distribution, and a rollover was completed to IRA Y on March 13, 2004.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and against equity or good conscience.

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.

Code section 408(d)(3)(E) provides that paragraph 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under subsection (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.

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 and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by Individual G in improperly liquidating IRA X, of which Taxpayer A was beneficiary, without her knowledge and consent and in failure to inform Taxpayer A that the funds were IRA funds. Furthermore, upon learning of the nature of the funds, Taxpayer A and Attorney H took all appropriate action to correct the failure and immediately deposited Amount D into IRA Y.

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 D. Pursuant to this ruling letter, the Service will treat Taxpayer A's March 13, 2004, rollover contribution of Amount D into IRA Y as a valid rollover within the meaning of Code section 408(d)(3).

200608034

4

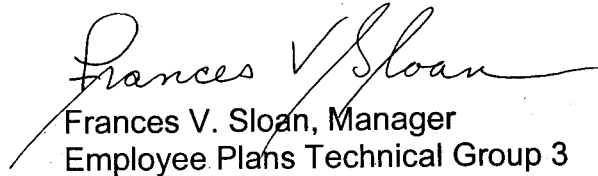
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

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 [REDACTED]  
I.D. # [REDACTED] at [REDACTED] 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 letter ruling  
Notice of Intention to Disclose