

INTERNAL REVENUE SERVICE

200611039

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Uniform Issue List: 402.00-00

SE: T: EP: RA: T3

Legend:

Taxpayer A =  
Amount D =  
Company M =  
Plan X =

Dear [REDACTED]

This is in response to your letter dated February 4, 2005, and April 11, 2005, in which you request 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, age 52, represents that she received a distribution from Plan X, a Simple IRA Plan, totaling Amount D on October 26, [REDACTED]. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a severe winter storm which delayed her timely express mailing of her rollover contribution check past the 60-day rollover period. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A attempted to roll over Amount D into Plan X within 60 days by a certified check in Amount D to Company M and, on December 22, [REDACTED]. Taxpayer A mailed the check by way of express mail with guaranteed next day delivery. However, due to a severe winter storm the postal processing center was shutdown and the check was delayed for an additional 7 days until December 29, [REDACTED].

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 provided on behalf of Taxpayer A demonstrates a failure on her part to timely accomplish a rollover of Amount D due to events beyond her control. Taxpayer A timely issued a certified check and used express next day mail to insure the delivery of her rollover deposit to Company M within the 60 day period. Taxpayer A documented her representations with an express mail receipt dated December 22, 2004. However, a severe winter storm caused her check to be delayed in the mail past the 60-day period.

Thus, based on the above, 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 December 29, 2004, rollover contribution of Amount D into Plan X as a valid rollover 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.

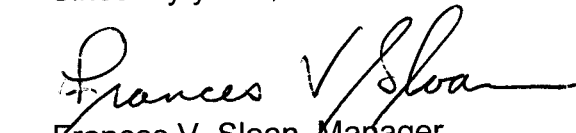
A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

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If you wish to inquire about this ruling, please contact [REDACTED]  
I.D. # [REDACTED] at x [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