



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

200638025

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

JUN 30 2006

T:EP:RA:TB

*Uniform Issue List: 408.03-00*

**Legend:**

Company A =

Amount D =

Date M =

Date N =

Account W =

IRA X =

IRA Y =

Dear :

This is in response to your request dated February 17, 2005 as supplemented by correspondence dated June 8, 2006, and June 18, 2006, 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.

You represent that you received a distribution from IRA X totaling Amount D. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code, was due to a misunderstanding between you and a Company A representative which led to Amount D being placed into a non-IRA account.

You are 76 years old and maintain IRA X and IRA Y with Company A. You also maintain Account W with Company A. Account W is not an IRA. In an effort to diversify investment risk, on Date M, 2005, you placed a telephone call to a representative of Company A and requested that Amount D be transferred from IRA X. You maintain that you intended to transfer Amount D to IRA Y but, as a result of a misunderstanding, Company A's representative transferred Amount D to Account W, a non-IRA. The account numbers for IRA Y and Account W are almost identical. On Date N, 2006, when you received your Form 1099-R, you realized that Amount D was transferred to Account W. Date N, 2006, was after the 60-day rollover period expired. A letter from Company A confirms that your regular Company A representative was unavailable at the time you made your request and, after they listened to a recording of the conversation that you had with the Company A representative, who handled the distribution, admits that there was some confusion regarding the distribution and your intentions which led to Amount D being placed in the non-IRA.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to Amount D, 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 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 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.

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.

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.

The information presented, and the documentation submitted by you demonstrates that your failure to accomplish a timely rollover was caused by a miscommunication and confusion in transferring the funds from IRA X. 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 D from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, 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 contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

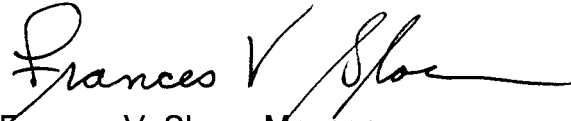
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

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

If you wish to inquire about this ruling, please contact\*\*\*\*\* (ID \*\*\_\*\*\*\*) at (\*\*\*) \*\*\_\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T:3

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name and title.

Frances V. Sloan, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: