



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200704038

NOV - 3 2006

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =  
Taxpayer B =  
IRA X =  
IRA Y =  
Amount A =  
Amount T =  
Financial Institution M =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =

Dear

This is in response to your request dated March 22, 2006, as supplemented by correspondence dated August 14, 2006, submitted on your behalf by your authorized representative, 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 78, received a distribution on Date 1, 2005, from IRA Y totaling Amount A. Taxpayer A received a distribution on Date 2, 2005, from IRA X totaling Amount T. It is asserted that Taxpayer A's failure to accomplish a rollover of either distribution within the 60-day period prescribed by section 408(d)(3) was due to errors and misunderstandings on the part of employees of Financial Institution M. Taxpayer A further represents that Amounts A and T have not been used for any other purpose.

Taxpayer A asserts that on or about Date 3, 2005, Taxpayer A contacted Financial Institution M to accomplish a rollover of Amount A into an IRA, and on or about Date 4, 2005, Taxpayer again contacted Financial Institution M to accomplish an IRA rollover of Amount T. On each date Taxpayer A indicated to Financial Institution M representatives that he had closed his IRA account and wished to roll over these amounts into another IRA. On each occasion Taxpayer A signed and returned paperwork sent him by Financial Institution M believing he had purchased an IRA CD and had established a rollover account.

During this period, Taxpayer A was the primary care giver for his spouse who has been diagnosed with a debilitating mental condition. As a result, Taxpayer A was unable to monitor his financial affairs as closely as he would have liked and did not realize that the papers he was signing did not establish an IRA account.

In calendar year 2006, while completing Taxpayer A's calendar year 2005 Federal income tax return, Taxpayer A's certified public accountant informed Taxpayer A that Amounts A and T were invested in non-IRA accounts at Financial Institution M. Said Amounts A and T remain invested in non-IRA vehicles.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount A contained in section 408(d)(3) of the Code ("the Code").

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)(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)(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.

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.

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 documentation submitted by Taxpayer A is consistent with his assertion that a failure to accomplish a rollover of either IRA distribution within the 60-day period prescribed by section 408(d)(3) was due to errors on the part of a financial institution. Taxpayer A requested a rollover of

each of the distributed amounts and signed paperwork purchasing two certificates of deposit believing he was establishing two IRA rollover accounts. However, contrary to Taxpayer A's representations to them, personnel of Financial Institution M invested these amounts in non-IRA accounts.

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 to Taxpayer A of Amounts A and T from IRAs Y and X, respectively. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to the total of Amounts A and T (except as noted below) to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution of an amount not to exceed the total of Amounts A and T (except as noted below) will be considered a rollover contribution within the meaning of Code section 408(d)(3).

It is noted by the Service that Taxpayer A has attained his required beginning date as that term is defined in Code section 401 (a)(9)(C) (has attained age 70  $\frac{1}{2}$ ). Thus, this letter ruling does not authorize the rollover of any amount(s) required to be distributed with respect to the 2005 and 2006 calendar years.

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.

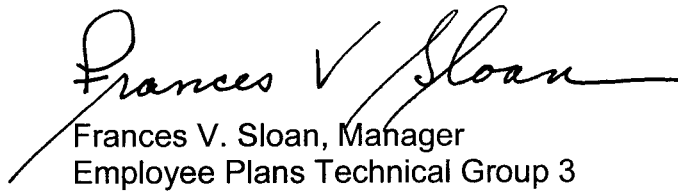
A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

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