

200727026



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List 408.00-00

APR - 9 2007

Legend:

Decedent A =

Bank B =

Company C =

Company D =

Company E =

Company W =

Individual F =

Individual G =

Date H =

Date I =

Date J =

Date K =

Date L =

Date M =

Date N =

Date P =

Date Q =

Date S =

Legend (continued)

Date T =

Date U =

Amount M =

Amount N =

Amount S =

Amount T =

Amount U =

Amount V =

IRA X =

IRA Y =

Account Z =

Dear:

This is in response to your request dated on December 1, 2006, submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated March 8, 2007, supplemented the request.

Under penalty of perjury, you have submitted the following facts and representations:

You represent that you received distributions from IRA X totaling Amount V (Amount M plus Amount N). 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 an error made by Company D, which led to Amounts M and N being placed into a non-IRA account. You further represent that Amounts M and N have remained in the non-IRA account and have not been used for any other purposes.

You were married to Decedent A. Decedent A died on Date H, 2001. Within 60 days of the death of Decedent A you opened IRA X, at Bank B, as a rollover spousal IRA. The funds in IRA X constituted the assets formerly held in Decedent A's IRA. You are age and have been receiving the required minimum distributions from IRA X.

When IRA X was established, liquid assets were invested through Company E.

In 2004, you engaged Company C as an investment advisor. Individual F was your financial advisor with Company C. Individual F recommended that the liquid assets held under Company E be liquidated and transferred to Company D for investment in mutual funds offered by Company D.

To accomplish the transfer of liquid assets to Company D, Individual F asked you to complete a brokerage account application and a costumer account transfer form. These documents were prepared by Individual F with the assistance of Company D representatives, and the forms were signed by you on Date I, 2004.

It was your intent to establish a brokerage account with Company D under IRA X, but Account Z, a non-IRA account, was opened in error by Company D on Date J, 2004. On or about Date K, 2004, Individual F sent an email to Company D explaining that Account Z "will form part of [your IRA] for which [Bank B] serves as custodian of the account and all tax reporting must go to the bank for all assets held in the account."

On Date M, 2004, Amount M was transferred from Company E into Account Z. On Date N, 2004, Amount N was transferred from Company E into Account Z, which you believed to be a part of IRA X. Further, Bank B did not treat the transfers to Account Z as a distribution from IRA X, and continued to treat the assets in Account Z as assets in IRA X, as evidenced by the annual account summary dated Date P, 2004. Company D issued monthly investment reports directly to Individual F with respect to Account Z and copies were sent to you. Individual F never realized that Amounts M and N were being held in a taxable account.

In 2005, you received various federal income tax reporting statement, including 1099-DIV, 1099-INT, issued by Company D. You engaged Company W to prepare your tax returns of 2004. You and your son-in-law, Individual G, reviewed the return, and noticed, what he believed to be erroneous tax reporting by Company D. Individual G contacted Bank B on Date U, 2005, stating that the assets in Account Z were held under IRA X. Bank B, in turn sent a letter to Individual F on Date U, 2005, stating that the assets in Account Z were to be held under IRA X.

It was after reviewing your tax forms that you realized that Company D was treating Account Z as a taxable brokerage account, and not part of IRA X and you attempted to work with Company D to correct the erroneous tax reporting, but Company D would not change its records.

You wished to continue holding mutual funds offered by Company D and to maintain the treatment of those assets as Individual Retirement Account assets. Following consultations with Individual F, Individual G and representative of Company W you decided to liquidate IRA X and establish an IRA with Company D.

Discussions among you, your representatives, Bank B and Company D followed. Bank B and Company D both took the position that continuing investments in mutual funds offered by Company D, but under an IRA sponsored by Company D, would require wire transfers between Bank B and Company D. Company D would liquidate the assets held in Account Z and transfer the proceeds by wire to Bank B. You would open a new IRA at Company D into which Company D agreed to accept the proceeds liquidated from Account Z and transferred to Bank B. Bank B would then wire the liquidation proceeds back to Company D for acceptance into an IRA.

On Date Q, 2005, you opened IRA Y with Company D. On Date S, 2005, Amount S was liquidated from Account Z and transferred to Bank B. On Date, 2005, Amount T was transferred from Bank B to IRA Z. (Amount U was distributed to you as part of the minimum required distribution).

Based on the foregoing, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amounts M and N from IRA X and that amounts reported by Company D as taxable, will not be treated as taxable.

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.

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 you is consistent with your assertion that your failure to accomplish a timely rollover was caused by a mistake made by Company D, which led to Amounts M and N being placed into a non-IRA account.

Accordingly, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amounts M and N. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met, the Date T, 2005, contribution of Amounts M and N into IRA Y will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code, and Amounts M and N will not be treated as taxable.

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

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This letter only authorizes the rollover of the amounts distributed from IRA X (Amounts M and N) and does not authorize the rollover of any interest attributable to such amounts.

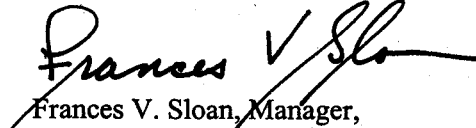
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

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 representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (ID) 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 ruling letter
Notice of Intention to Disclose

CC