



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200809043

DEC - 4 2007

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =
IRA X =
Amount B =
Individual C =
Individual D =
Financial Institution E =
Financial Institution F =
Amount G =
Month 1 =
Month 2 =
Date 3 =
Date 4 =

Dear

This is in response to your request dated February 23, 2007, as supplemented by correspondence dated March 1, 2007, and July 30, 2007, 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.

In 2003, Taxpayer A, age 64, established a rollover Individual Retirement Annuity ("IRA X") with Financial Institution E. Annual policy statements sent to the Taxpayer by Financial Institution E noted that the Annuity was an IRA.

In 2006, Financial Institution E contacted Taxpayer A and informed her that since the agent who sold her the annuity was an unlicensed agent, she had the option to surrender her contract. Taxpayer A contacted Financial Institution E in Month 1, 2006, and asked for an explanation as to how much she originally put into IRA X and how much she would receive if she surrendered her contract. A representative of Financial Institution E stated that Taxpayer A would have approximately Amount B in gain.

Taxpayer A has submitted an affidavit from Individuals C and D of Financial Institution F who manage a Roth IRA for Taxpayer A, indicating that in Month 2, 2006, they reviewed a proposed Settlement Agreement and Release between Taxpayer A and Financial Institution E. However, they note that their involvement was in respect to reviewing the interest rate Taxpayer A was being offered by Financial Institution E.

On Date 3, 2006, Taxpayer A executed the Settlement Agreement and Release which contains a provision stating that "Financial Institution E has made no representation regarding the tax liability resulting from the payment and that the responsibility to address any tax consequences is solely the responsibility of Taxpayer A."

On Date 4, 2007, Taxpayer A received a Form 1099 from Financial Institution E showing Amount G (the original amount invested by Taxpayer A in IRA X together with the gain thereon) to be a taxable distribution.

Taxpayer A asserts that Financial Institution E erred in not informing her that the distribution of her IRA would be taxable to her and that she was never informed about or given the option to complete a rollover.

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

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 distribute, 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.

Taxpayer A has not demonstrated that her inability to complete a timely rollover of Amount G was caused by any of the factors cited in Rev. Proc. 2003-16. Taxpayer A asserts that Financial Institution E's failure to advise her that the distribution would be taxable or that she had rollover options, rises to the level of financial institution error. However, the Code imposes no such obligation on IRA custodians. Absent actions on the part of a financial institution or financial advisor undertaking such an obligation, (e.g. where a taxpayer has erroneously been advised that the rollover period is 90 days), we will not recognize this failure as financial institution error. In addition, the Settlement Agreement and Release executed by Taxpayer A provides that Financial Institution E was making no representations as to the Taxpayer's liability and that it was Taxpayer A's responsibility to determine her tax liability. Taxpayer A has not asserted that she discussed the distribution with anyone subsequent to her execution of the Settlement Agreement and Release. Further, it appears from the facts that Taxpayer A was aware from annual policy statements received by her that the annuity was an IRA and had had prior experiences in dealing with rollover transactions. We do not believe that Congress intended to permit the Service to retroactively undo a transaction merely because it results in adverse tax consequences to the Taxpayer.

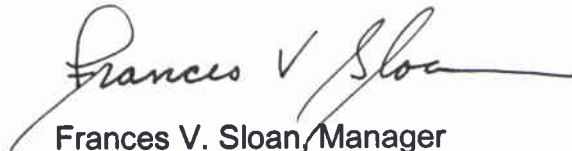
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount G from IRA X.

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.

If you wish to inquire about this ruling, please contact _____ at
. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Frances V. Sloan", with a long horizontal flourish extending to the right.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

CC: