



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200944060

AUG -7 2009

**Uniform Issue List: 408.03-00**

SE: T: EP: RA: T3

**Legend:**

IRA X =  
Account D =  
Amount A =  
Date 1 =  
Date 2 =  
Date 3 =  
Company A =

Dear :

This is in response to a request you submitted on May 14, 2009, 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 assert that your failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408 (d) (3) of the Code was due to the failure of Amount A to be deposited into an IRA per your instructions. You have documented that you have not used Amount A for any other purposes.

You are 82 years old. You had an Individual Retirement Arrangement (IRA), IRA X, which was maintained by Company A. You telephoned Company A on Date 1 in order to change the beneficiary of IRA X. As a result of this call, Company A mailed you a form for your signature. You signed and returned the form to Company A. You believed that by signing this form you would only be changing the beneficiary of IRA X. Instead, on Date 2, Amount A was transferred from IRA X to Account D, a non-IRA account, an action you assert you did not request or intend. Account D is also maintained by

Company A. You assert that this transaction did not reflect your intent that Amount A remain in an IRA at all times.

You assert that you became aware that a taxable distribution of Amount A, from IRA X, had taken place on Date 3 when you received a Form 1099-R from Company A. Date 3 is outside the statutory 60-day window provided for rollovers. You were unable to execute a timely rollover of Amount A due to the expiration of the 60-day period.

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 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) (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 section 408 (d) (3) (A) 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) of the Code, 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 you submitted is consistent with your assertion that your failure to accomplish a timely rollover was due to the failure of Amount A to be deposited into an IRA per your instructions.

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 A (less amounts described below) from IRA X. You are granted a period of 60 days from the issuance of this letter ruling to contribute Amount A 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 A (less amounts described below) will be considered a rollover contribution within the meaning of section 408 (d) (3) of the Code.

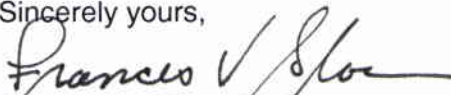
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto. This letter expresses no opinion as to whether IRA X satisfied the requirements of section 408 of the Code.

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).

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 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