



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200950052

Uniform Issue List: 408.03-00

SEP 16 2009

TEMP. RATS

Legend:

Taxpayer A:

IRA X:

Amount M:

Amount O:

Amount P:

Extended Period X :

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Financial Institution B:

Attorney T:

State M:

Dear :

This is in response to your letters dated December 12, 2008, and June 7, 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.

Taxpayer A asserts that on Date 2 Taxpayer A authorized a distribution of Amount M from IRA X which she maintained with Financial Institution B. Taxpayer A asserts that her failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to Financial Institution B's error in providing misleading information.

On Date 1, Taxpayer A spoke with a retirement specialist at Financial Institution B to discuss the possibility of taking a distribution of Amount M from IRA X to be used for purposes of purchasing a residence and the return of Amount M to IRA X within the appropriate time period. The retirement specialist informed Taxpayer A about tax rules regarding distributions from an IRA including the rules about distributions from IRA's after age 59 ½. The retirement specialist erroneously informed Taxpayer A that she had Extended Period X to roll the distribution back into the IRA since the distribution was used for the purchase of a home. The retirement specialist indicated that otherwise the rollover time frame would be 60 days.

Relying on this information Taxpayer A requested a distribution from IRA X of Amount M, which Taxpayer A received on or about Date 2. On Dates 3 and 4, which were beyond the expiration of the 60-day rollover period (but within Extended Period X) Taxpayer A returned Amounts O and P respectively as rollover contributions into IRA X. Amounts O and P equal Amount M. Taxpayer A first became aware of Financial Institution B's error when she received her year 200 Form 1099-R from Financial Institution B. After working with her CPA on her year 200 tax return, he suggested that Taxpayer A should consult an attorney about requesting a 60-day waiver from the Internal Revenue Service.

Taxpayer A promptly entered into a contract dated Date 6 for the services of Attorney T to handle her IRA distribution matters with the Service. However, because of a lack of performance on the part of Attorney T, Taxpayer A terminated his services on Date 7, and subsequently wrote a letter to the Supreme Court of State M concerning Attorney T. On Date 8, Taxpayer A received a letter from the Office of the Chief Disciplinary Counsel of State M

informing Taxpayer A that Attorney T had been disbarred by the Supreme Court of State M and that Taxpayer A should seek the advice of a private attorney concerning her options to receive restitution.

Taxpayer A has submitted a letter from Financial Institution B dated Date 5 in which Financial Institution B confirmed that Taxpayer A was advised by a Financial Institution B retirement specialist that Taxpayer A had Extended Period X to complete a rollover distribution during a conversation on Date 1. Taxpayer A further represents that she has not used Amount M for any other purpose.

Taxpayer A has represented that she was not a first-time homebuyer at the time she received Amount M on Date 2.

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 M, contained in section 408(d)(3) of the Code ("the Code").

Concerning Extended Period X, section 72(t)(2)(F) of the Code provides that certain distributions for first home purchases may not be subject to the additional tax under section 72(t)(2) relating to the 10-percent additional tax imposed under section 72(t)(1) on early distributions if the distribution from an individual retirement plan is a qualified first-time homebuyer distribution as that term is described in sections 72(t)(8)(A), (B), (C), (D), or (E).

Section 72(t)(8)(A) provides, in general, that a "qualified first-time homebuyer distribution" means any distribution received by an individual to acquire a principal residence before the close of the 120<sup>th</sup> day after the day on which such payment or distribution is received.

Section 72(t)(8)(E) of the Code provides a special rule where a failure to meet the requirements of section 408(d)(3)(A) of the Code is due to a delay in acquisition, or cancellation of the purchase or construction of the residence, the amount of the distribution from an individual retirement account may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) by substituting "120<sup>th</sup> day" for "60<sup>th</sup> day" in section 408(d)(3)(A)(i).

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 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)(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 her assertion that her failure to accomplish a rollover of Amount M was due to Financial Institution B's error in providing misleading information.

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 Amount M. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the Service will treat Taxpayer A's Date 3 and Date 4 contributions of Amount O and P respectively to IRA X as a rollover contribution within the meaning of Code section 408(d)(3).

For purposes of this ruling, the statute of limitations has not expired and calendar year 2005 is an open tax year.

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

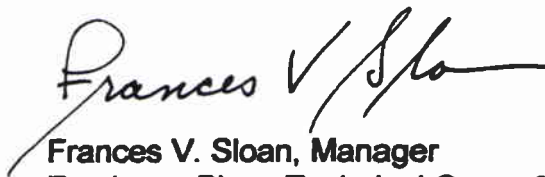
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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.

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If you have any questions, please contact

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan". The signature is fluid and cursive, with a large initial "F" and a stylized "S" at the end.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

**Enclosures:**

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose