



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201003033

U.I.L. 408.03-00

OCT 30 2009

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SE: TLEP: RA: 73

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXXX
Company E = XXXXXXXXXXXXXXXXXXXXX
Company F = XXXXXXXXXXXXXXXXXXXXX
Individual M = XXXXXXXXXXXXXXXXXXXXX
Date G = XXXXXXXXXXXXXXXXXXXXX
Year H = XXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxx, 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 penalties of perjury in support of your request.

Taxpayer A represents that she received a distribution from IRA X totaling Amount D in error. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the error

committed by Company F. Taxpayer A further asserts that Amount D has not been used for any other purpose.

Taxpayer A, age 57, maintains IRA X, a traditional Individual retirement arrangement (IRA) with Company E. In Year H, Taxpayer A began receiving from IRA X one payment of Amount D per month, an arrangement that was intended to satisfy the requirements of Code section 72(t) (2)(A)(iv) as a series of substantially equal periodic payments. Payments were made on the first of each month.

Taxpayer A represents that in xxxxxxxxxxxxxx, her financial advisor, Individual M, changed employers and he went from Company E to Company F. As a result Taxpayer A's account was also transferred from Company E to Company F. Taxpayer A further represents that the arrangement was to be set up in Company F's system to begin payments in xxxxxxxxxxxxxx but because of an error on the part of Company F, one additional payment of Amount D was distributed from IRA X on Date G rather than xxxxxxxxxxxxxx. As a result, Taxpayer A had received thirteen (13) payments in xxxxxxxxxxxxxx.

Taxpayer A states that this error on the part of Company F was not discovered until March 200 when her 200 tax return was prepared and at that time, the 60-day rollover period provided under Code section 408(d)(3) had expired.

Taxpayer A asserts that she did not request the 13th payment that was made in xxxxxxxxx of xxxxxxxxx by Company F and that this payment was made in error committed by Individual M of Company F.

In a letter dated xxxxxxxxxxxxxx, submitted with the request, Individual M has admitted that the immediacy of this transfer resulted in Taxpayer A's receiving a total of 13 distributions in xxxxxxxx as opposed to the required 12 distributions.

Based upon the foregoing facts and representations, Taxpayer A requests that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

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)(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 received 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 in 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 included 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)(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 and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur 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, 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 D, the 13th payment made on Date G was due to the error committed by her financial advisor, Individual M, of Company F. Further, in a letter dated June 29,

200 Individual M admitted that a mistake was made by Company F and the 13th payment to Taxpayer A from IRA X was made in error committed by Company F.

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 D from IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

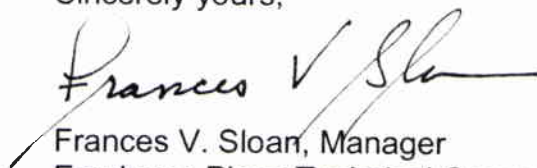
This ruling is limited to a request for a waiver of the 60-day rollover period. No opinion is expressed as to whether the payments from IRA X to Taxpayer A constitute substantially equal periodic payments within the meaning of Code section 72(t)(2)(A)(iv). Further no opinion is expressed as to whether the extra payment by Company F to Taxpayer A, or the exercise of this waiver of the 60-day rollover period by Taxpayer A would cause a modification of substantially equal periodic payments within the meaning of Code section 72(t)(4).

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxxxx at xxxxxxxxxxxxxxxx.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan", with a stylized flourish at the end.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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Notice 437