

201007082



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 408.03-00

SE:T:EP:RA:T:3

NOV 24 2009

Legend

Taxpayer A:

Amount M:

Amount N:

Amount O:

Date 1:

Date 2:

Date 3:

Financial Institution A:

Financial Institution W:

Financial Institution B:

Hospital S:

Dr. E:

IRA X:

Dear :

This is in response to your letters dated March 9, 2009, July 30, 2009, and October 1, 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 maintained an Individual Retirement Account (IRA), IRA X, with Financial Institution A. Taxpayer A, age 69, asserts that on Date 1, Taxpayer A received a distribution of Amount M from IRA X. Taxpayer A asserts that his failure to accomplish a rollover of Amount O within the 60-day period prescribed by section 408(d)(3) of the Code was due to his wife's illness and his duties as a primary caregiver.

On Date 1 Taxpayer A closed IRA X because he feared Financial Institution A would soon fail. Shortly thereafter Taxpayer A deposited Amount N in a non-IRA liquid account at Financial Institution W and deposited Amount O in a non-IRA liquid account at Financial Institution B. Amounts N and O equal Amount M. Taxpayer A intended to complete the rollover of Amount O after the banking crisis stabilized.

Taxpayer A's wife was discharged from Hospital S on Date 3 after having undergone major surgery which incapacitated her mobility. During the 60-day rollover period Taxpayer B was the primary caregiver for his wife. As the primary caregiver Taxpayer A was responsible for his wife's care seven days per week including taking care of her meals, cleaning, lifting her in and out of bed, trips to medical care providers, medication administration, rehabilitation physical therapy and exercise assistance. Taxpayer A asserts that his primary caregiver duties during this period resulted in his inability to attend to his financial affairs. Taxpayer A attempted to complete a rollover of Amount M on Date 2 but his attempts were denied because Date 2 was six days beyond the end of the 60-day rollover period.

Documentation has been submitted from Dr. E dated Date 3, confirming the medical condition of Taxpayer A's wife.

Taxpayer A has not used Amount O for any other purpose.

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

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 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 Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount O within the 60-day period prescribed by section 408(d)(3) of the Code was due to his wife's illness and his duties as a primary caregiver.

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 O. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of Amount O to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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 have any questions, please contact

Sincerely yours,

A handwritten signature in black ink that reads "Frances V. Sloan". The signature is written in a cursive style with a long horizontal stroke at the end.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose