



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201022027

Uniform Issue List: 408.03-00

MAR - 8 2010

SET:EP:RA:73

Legend:

Taxpayer A:

IRA X:

Financial Institution L:

Financial Institution M:

Financial Advisor W:

Amount M:

Amount O:

Date 1:

Date 2:

Date 3:

Month 10:

Enrolled Agent W:

Dear :

This is in response to your letters dated August 3, 2009, and November 5, 2009, 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 penalty of perjury in support of the ruling requested.

Taxpayer A, age , maintained an Individual Retirement Account (IRA), IRA X, with Financial Institution L. Taxpayer A asserts that on Date 2 Taxpayer A received a distribution of Amount M from IRA X and 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 Advisor W error.

Relying on advice from Advisor W of Financial Institution L Taxpayer A requested a direct transfer of Amount O which had been held in an IRA at Financial Institution M. On Date 1 Amount O was transferred in a trustee-to-trustee transfer from Taxpayer A's IRA at Financial Institution M to IRA X maintained by Financial Institution L.

In Month 10, because of losses incurred by IRA X, Taxpayer A contacted Financial Advisor W and stated she wished to withdraw all of IRA X before she incurred any further losses. Taxpayer A informed Financial Advisor W of her intent to reinvest the funds in a certificate of deposit at a credit union. In the discussion about the withdrawal from IRA X, Financial Advisor W advised Taxpayer A to be sure to tell the bank that it was an IRA when cashing the check but failed to inform her of the 60-day rollover period or the possibility of a trustee-to-trustee transfer. Financial Advisor W completed a distribution request form for Taxpayer A and on Date 2 Financial Institution L issued a check in Amount M to Taxpayer A which was a total distribution of IRA X.

During Month 10 Taxpayer A received a check for Amount M and placed the uncashed check in a safe deposit box pending her return from a trip to take care of her sister. Upon returning, Taxpayer A attempted to establish a rollover IRA at a credit union but was told that she could not because the 60-day rollover period had expired approximately one week earlier.

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").

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 within the 60-day period prescribed by section 408(d)(3) of the Code was due to Financial Advisor W error.

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 M from IRA X. 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 an amount equal to Amount M 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).

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.

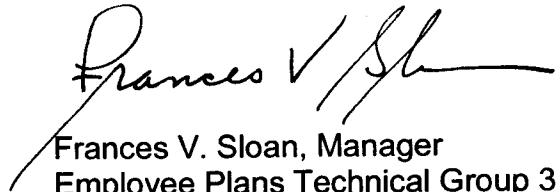
A copy of this letter ruling is sent to your authorized representative pursuant to the provisions of a Power of Attorney on file in this office.

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If you have any questions, please contact XXXXXXXXXXXXXXXXXXXXXXX by  
phone at XXXXXXXXXXXXXXX or fax at XXXXXXX.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose