



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

AUG 10 2004

200445030

SE: T: EP: RA: T3

Uniform Issue List: 408.03-00

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Legend

Taxpayer A = \* \* \*

Taxpayer B = \* \* \*  
\* \* \*

IRA C = \* \* \*  
\* \* \*

Account D = \* \* \*

Account E = \* \* \*

Transfer Agent F = \* \* \*

Trustee G = \* \* \*

Amount H = \* \* \*

Dear \* \* \*:

This is in response to your letter dated April 23, 2004, supplemented by faxed information dated June 21, 2004 and July 30, 2004, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Prior to January , Taxpayer A maintained IRA C, an individual retirement arrangement ("IRA") described in Code section 408(a), in his name. Trustee G was the Trustee for IRA C where it was held in a government money market fund.

On approximately December 10, Taxpayer A was hospitalized for heart surgery. During the following four months, Taxpayer A was only able to return home for a few days and was unable to handle any affairs. Taxpayer A had previously handled all of the financial affairs of Taxpayer B, his spouse, and himself and possibly consented to a liquidation of IRA C without Taxpayer B's knowledge. Trustee G closed IRA C and sent a liquidation check for Amount H to Taxpayer A's home through Transfer Agent F. This liquidation check was addressed to Taxpayer A IRA and was dated January 20, . and was in the amount of Amount H.

Taxpayer B did not discover the check until March 23, and does not know when the check was received in her home, as Taxpayer A had not told her to expect the check. Prior to March 23, Taxpayer B expected Taxpayer A to return home and resume handling their financial affairs. However, on that date, Taxpayer B realized that Taxpayer A's condition was deteriorating and that he would not be returning home due to the advanced state of his illness. Furthermore, Taxpayer B also realized that she needed to provide the necessary information to their tax preparer to enable him to file their .income tax returns. Being unaware of the circumstances surrounding the issuance of the January 20, , check, and unable to discuss the check with Taxpayer A due to his incapacity, Taxpayer B deposited the check into Account D on March 23, . On April 26, , Taxpayer A moved the amount deposited into Account D on March 23, into Account E for the purpose of keeping these funds separate from other funds.

Taxpayer B represents that she was not familiar with Transfer Agent F which unfamiliarity contributed to her not discovering the January 20, check until March 23, . Furthermore, she represents that she had limited expertise with the 60-day rollover requirement and, with respect to the January 20, check, believed that the 60-day period began to run as of the date of the check.

Taxpayer A died on April 24,

Taxpayer B was the sole primary beneficiary of IRA C. Furthermore, she is the sole beneficiary and executrix of Taxpayer A's estate. Also, Taxpayer B had general power of attorney over Taxpayer A's affairs during the period in which her husband Taxpayer A, was hospitalized.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount H from IRA

C, because the failure to waive such requirement would be against equity or good conscience.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA should 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

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 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 by Taxpayer B demonstrates that Taxpayer A did not timely roll over the check dated January 20, payable to Taxpayer A IRA because of his hospitalization and incapacitation. Taxpayer B was not expecting the check and did not discover it until March 23, a date that she believed was beyond the 60-day rollover period. The distribution check was not cashed until it was discovered and deposited on March 23. The funds have not been used or spent, and the request for this ruling was made within one month from the date on which the check was discovered.

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 G. Taxpayer B as executrix, surviving spouse, and sole beneficiary of Taxpayer A's estate, is granted a period of 60 days from the issuance of this ruling letter to contribute Amount H to an IRA in Taxpayer A's name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, said contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs under section 408(a)(6) of the Code).

The Service notes that the IRA into which Amount H will be rolled over will not have a designated beneficiary as that term is defined in Code section 401(a)(9).

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.

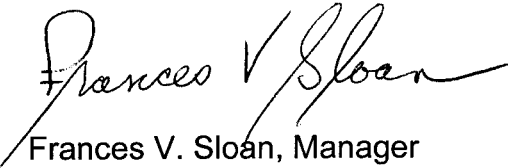
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**200445030**

If you wish to inquire about this ruling, please contact \*\*\*, I.D. #\*\*\*, at \*\*\*.  
Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in black ink and is positioned above the printed name.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures: Deleted copy of this letter  
Notice of Intention to Disclose, Notice 437