

200529013



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 29 2005

Uniform Issue List: 408.00-00

T:EP:RA:T3

Legend:

Company A =
Company B =
Individual D =i
Individual E =
Amount M =
IRA X =
IRA Y =

Dear

This is in response to your request received in the Internal Revenue Service on February 28, 2005, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

Your have submitted the following facts and representations:

You had established IRA X at Company A. You have had breast cancer since 1999 and are on permanent Social Security Disability. Because of your illness, your husband acted on your behalf in changing your individual retirement arrangement. In 2004, he asked Individual D, an employee of Company A, to open a separate account as a rollover account and to transfer Amount M into such account with company A. His secretary, Individual E was told to set up the account. Amount M which constituted all funds in IRA X were transferred to another account

with Company A, which your husband believed was an IRA, on [REDACTED]. When you received 1099-R for the [REDACTED] taxable year you realized that Amount M was not transferred to an IRA and was considered a taxable distribution. The 60 day period for rolling over the funds had elapsed when you received the 1099-R. Your husband immediately contacted Company A about the account, but they were unable to help you, because the 60-day rollover period had expired. IRA Y was then established at Company B, in your name, and you contributed Amount M to that IRA. At the time of the distribution you were under age 70 ½.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount M from IRA X because the failure to waive such requirement would be against equity or good conscience.

With respect to your ruling request, 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)(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)(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 you presented demonstrates that you attempted to affect a timely rollover, but due to a miscommunication between your husband and Company A personnel, which resulted in Company A not following your husband's instructions, you were unable to satisfy the requirement to redeposit Amount M in a proper IRA. The information presented by you is consistent with your assertion that you attempted to rollover Amount M. Amount M was deposited into another account at Company A, which you believed to be an IRA, without ever receiving such amount. You eventually redeposited Amount M in IRA Y.

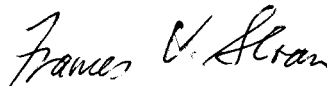
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distribution of Amount M from IRA X. You are granted a period of 60 days measured from the date of the issuance of this letter to make your rollover. Since you have indicated that Amount M has been placed in IRA Y, you should take a copy of this letter to Company B within the requisite 60 day period to insure that IRA Y meets the requirements of section 408(a) of the Code. Provided all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to Amount D, such amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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 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 wish to inquire about this ruling, please contact ***** (ID **-****) at [REDACTED] [REDACTED] (not a toll free number). Please address all correspondence to SE:T: EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose