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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAY 12 2004

Uniform Issue List: 408.03-00

Legend:

Individual A =
Amount C =
Amount D =
Amount E =
Company F =
Court M =
Date P =
Date Q =
Date R =
Date S =
IRA X =

Dear

This is in response to a request dated March 25, 2004, submitted on your behalf by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated April 16, 2004, and May 5, 2004, supplemented the request

Your authorized representative has submitted the following facts and representations:

You established IRA X. On Date P, Individual A, your son, withdrew Amount D from IRA X, on Date Q he withdrew Amount E from the IRA and misappropriated the funds for his own use. Amount D and Amount E totaled Amount C. Both withdrawals were done without your knowledge or consent. Also, in 2002 you required medical treatment for cancer and were undergoing extensive chemotherapy. You have been advised that surgery is not possible for treatment of the cancer. You had no knowledge of the withdrawal of the funds until after the 60 day period allowed for rollovers had expired. Even if you had been aware of the withdrawal from IRA X, you did not have sufficient funds to replace the misappropriated funds.

A Form 1099-R was issued in your name for Amount C. To the extent permissible by law, Amount C was reported on your Form 1040 (Schedule A) as a theft loss.

You filed a civil action in Court M against Individual A which resulted in a stipulated judgment for Amount C, plus attorneys' fees and court costs. Due to a lack of assets, this judgment will not be collectible against Individual A.

A criminal complaint for theft was filed against Individual A and he was sentenced on Date R.

A civil action was considered against Company F, and a tentative settlement was reached on Date S. The settlement, under a confidentiality agreement, will return a sum of money to you. You did not have outside funds available for transfer to a new rollover IRA prior to the possible settlement of the civil action against Company F.

It is represented that Amounts D and E will be contributed to an IRA in your name within 60 days after a waiver is granted.

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

Revenue Procedure 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, but not limited to: (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 you demonstrates that you had no knowledge of the fraudulent withdrawal of funds from your IRA by Individual A. Due to the onset of a serious disease, you did not realize that the funds were withdrawn until after the 60 day period for rolling over funds had expired, and prior to the settlement with Company F you did not have the funds to complete a rollover.

Therefore, based on the above, 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. You are granted a period of 60 days from the issuance of this ruling letter to complete the rollover of Amount C into an IRA maintained in your name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the amounts deposited into another IRA, will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) 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 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.

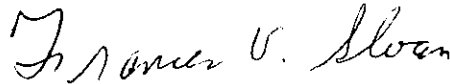
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The original of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***** (ID: **-*****) at (***) ***-****. Please address all correspondence to SE:T: EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan".

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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: