



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

200538032

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 30 2005

Uniform Issue List: 408.03-00

SE: T: CP: RA: T3

Legend:

Taxpayer A =

State A =

State T =

Amount D =

IRA A =

IRA X =

Company A =

Bank B =

Dear [REDACTED]

In letters dated August 5, 2004, November 18, 2004, and December 27, 2004, your authorized representative requested 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's primary residence is in State T. In July 2003, Taxpayer A took up temporary residence in State A to be near the medical treatment facilities where he was receiving chemotherapy treatments for metastatic lung cancer. Taxpayer A was treated both as an in-patient and out-patient and was also admitted occasionally to receive intravenous fluid transfers during the treatment period because of fluid loss

complications. These treatments took place between July 2003 and November 2003. Taxpayer A remained in State A after the treatments ended to recuperate and to be in close proximity to his doctors so that his condition could be monitored.

Pursuant to Taxpayer's request, Company A mailed a check on or about September 15, 2003, to Taxpayer A's State T residence in Amount D as a distribution from IRA A which Taxpayer had maintained with Company A. Taxpayer A represents he intended to deposit Amount D into another IRA, IRA X, maintained with Bank B. Taxpayer A asked that the check be sent to his State T residence because he did not expect to remain in State A for such an extensive period and he was relying on his bookkeeper in State T to maintain his financial affairs while he was in treatment.

Taxpayer A was unaware that the check had been received at his State T home until on or about February 12, 2004. At that time, Taxpayer A's health had improved and he requested that his bookkeeper transfer Taxpayer A's business files to Taxpayer A at the State A location.

Among the correspondence received from the bookkeeper was the Amount D check that had been sent to the State T address from Company A. When Taxpayer A presented the check for deposit he was notified by Company B of the 60-day rule. However, Bank B accepted Amount D and opened IRA X. Documentation submitted shows the severity of Taxpayer A's illness and Taxpayer A's difficulties with his bookkeeper's poor performance which contributed to the complexities of maintaining Taxpayer A's finances.

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 D because the failure to waive such requirement would be a hardship and 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: (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.

Documentation submitted by Taxpayer A indicates that he intended to roll over the funds from IRA A but failed to accomplish the rollover because of his medical condition which required extensive treatment during the 60 day rollover period and during which Taxpayer A was unable to attend to financial matters and accomplish a timely rollover. Further, Taxpayer was relying on his bookkeeper to handle his financial affairs and the bookkeeper never informed Taxpayer A of the receipt of the September 15 check in Amount D. Taxpayer A never cashed the Amount D check and acted promptly and reasonably when he discovered the check.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount D. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to the IRA X contribution, the Service will treat Taxpayer A's February 2004 rollover contribution of Amount D into IRA X as a valid rollover contribution within the meaning of Code section 408(d)(3).

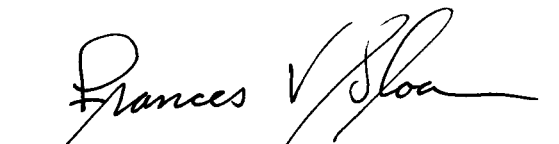
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 wish to inquire about this ruling, please contact [REDACTED] I.D. [REDACTED] at [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose