

INTERNAL REVENUE SERVICE

Uniform Issue List: 408.03-00

SEP 22 2004

SET: EP: RA: T3

Legend:

Individual A =
 Company B =
 Company C =
 Amount D =

Dear :

This is in response to correspondence dated December 12, 2003, as supplemented by correspondence dated February 25 and March 5, 2004, submitted on your behalf by your authorized representative in which you 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:

Your husband, Individual A, died on _____ One of the assets in Individual A's estate was an Individual Retirement Account (IRA) that had been established with and maintained by Company B. As the surviving spouse, you are the beneficiary of this IRA. Pursuant to correspondence from you and your attorney to Company B, on _____

Company B opened a money market account in your name with the proceeds of the distribution of the IRA. Although you received a money market checkbook from Company B, you never wrote a check from that account or otherwise withdrew funds. The distribution from the IRA was Amount D. You were aware that the source of Amount D, which was placed in the money market account, was an IRA with Company B.

Although you scheduled several meetings with an investment advisor, you had to cancel the appointments due to your or your daughter's health problems. You were finally able to meet with a Company C representative early in _____. The Company C representative informed you that the 60-day period for rolling over Amount D to a Rollover IRA had expired. You then contacted your attorney. Your attorney wrote to your financial advisor on _____ advising him of the problem. Your financial advisor was supposedly going to investigate the problem to see if he could somehow

reverse the paperwork since he was the person who initiated and assisted in the original redemption process.

The letter from your attorney to your financial advisor dated _____ was less than 60 days from the date that Company B placed Amount D into the money market account. Also, it appears that the Company C representative thought that the 60-day rollover time period began _____ the date of Individual A's death. Instead, the 60-day rollover period should have been measured from the date that Amount D was placed in the money market account,

Amount D remained in the Company B money market until _____ when it was wired into an account in your name at Company C, which is a stock brokerage firm. Amount D was subsequently transferred into a Rollover IRA in your name on _____. You have never used any part of Amount D.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code in this instance.

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 one-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)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where 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) of the Code, 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 relied upon the advice of the Company C representative who informed you that the 60-day period for rolling over Amount D to an IRA had expired. In addition, the letter from your attorney to your financial advisor dated _____ was less than 60 days from the date that Company B placed Amount D into the money market account. Although your financial advisor was aware of the problem and was supposedly going to conduct an investigation to see if he could somehow reverse the paperwork, there is no indication that he undertook any action on your behalf. Thus, the failure to deposit Amount D into a Rollover IRA within the 60-day period was beyond your reasonable control.

Therefore, (except as noted below,) the _____ rollover, described above, is deemed to have been timely made within the meaning of Code section 408(d)(3)(A). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such rollover contribution, the rollover contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6).

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 expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

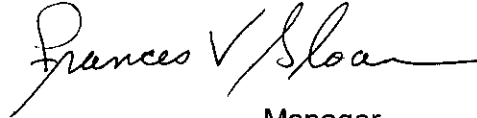
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact . Please address all correspondence to .

Sincerely yours,

A handwritten signature in black ink, reading "Frances V. Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

, Manager
Employee Plans Technical Group 3

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