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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 29 2004

Uniform Issue List: 408.03-00

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Legend

Taxpayer A = * * *

IRA B = * * *
* * *

IRA C = * * *

IRA D = * * *

IRA E = * * *

Bank J = * * *

Dear * * *:

This is in response to your letter dated January 31, 2004, supplemented by letter dated April 22, 2004, in which you request, through your authorized representative, 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:

Taxpayer A redeemed IRA B on September 8, 2003 and was issued a check for \$. Taxpayer A intended to rollover \$ and take the remaining \$ as a distribution. The check was deposited into Bank J on . At that time, Taxpayer A was told the funds would not be available until

Taxpayer A attempted to reach a family investment advisor during the month of September without success. During the month of October, Taxpayer A was away from home caring for her elderly mother. Also during the month of October, Taxpayer A deposited \$ into IRA C. Taxpayer A continued to attempt to reach a family investment advisor upon her return home in November.

On Monday, , Taxpayer A made two separate deposits each of \$ into IRA D and IRA E. At that time it had been exactly 63 days since she received the redemption from IRA B. If Taxpayer A had made these deposits on Friday, , they would have qualified under the 60-day rollover rule.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of \$ from IRA B, 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 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) 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 A demonstrates a clear intent to roll over the distribution she received from IRA B during September 2003. This is demonstrated by Taxpayer A's deposit of \$50,000.00 into IRA C and her unsuccessful attempts to contact a family investment advisor. Also, Taxpayer A missed the deadline for rollover by only 3 days, of which 2 of those days constituted a weekend.

Therefore, pursuant to section 408(d)(3)(i) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the remaining \$ of the \$ distribution from IRA B. The Service notes that in November of Taxpayer A established IRA D and IRA E each with a rollover contribution of \$. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

At this time Taxpayer A has extended the filing date of her Federal Income tax return by filing Form 4868. In order to effectuate this ruling Taxpayer A must file a Federal Income Tax return (Form 1040) consistent therewith.

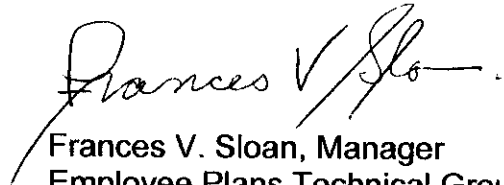
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs under section 408(a)(6) of the Code).

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 ***, ***, at ***. 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 this letter
Notice of Intention to Disclose, Notice 437

cc: ***

