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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

MAY 10 2004

*Uniform Issue List: 408.03-00*

**Legend:**

Individual A =

Individual B =

Amount C =

Amount D =

Amount E =

Amount F =

Bank G =

Court M =

Date P =

Date Q =

IRA X =

State Z =

Dear

This is in response to a request dated January 23, 2004, submitted on behalf of Individual A, by the authorized conservator of Individual A's estate, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). A letter dated April 14, 2004, supplemented the request.

The authorized representative has submitted the following facts and representations:

Individual A was the holder of IRA X. Individual A is elderly, suffers from dementia, and is generally in poor health. Individual B, the daughter of Individual A, accompanied Individual A to Bank G and Individual B, at the request of Individual A, withdrew Amount C from IRA X on Date Q. (Amount C represents Amount D (the total amount in IRA X) minus Amount E, the federal tax withheld.) Individual B made false representations to Individual A in order to obtain the funds that were withdrawn from Bank G. She led Individual A, in his confused state of mind, to believe that the money in IRA X was hers. Individual B then deposited Amount C in her own personal bank account. The transfer of funds to Individual B was made without the willing consent of Individual A, and was based on false representations made by Individual B.

Individual B initially refused to return the funds to Individual A, which resulted in legal action taken against Individual B. However, pursuant to an agreement entered into in Court M, a court of competent jurisdiction in State Z, on Date P, Individual B has agreed to return Amount C to Individual A. (The agreement erroneously stated the amount as "Amount F". However, pursuant to your authorized representative's representation, Individual A will, in fact, return Amount C). Date P was beyond the 60 period allowed for rollovers.

It is represented that Amount D will be contributed to an IRA in Individual A's 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 D, 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 60<sup>th</sup> 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 60<sup>th</sup> 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.

The information presented by you demonstrates that Individual A was confused when he withdrew an amount from IRA X, due in part to mental impairment, and that Individual B obtained the funds distributed from IRA X under false pretenses. Because Individual B refused to turn the funds over to Individual A, it was impossible for him to roll over such funds. The information presented indicates that the reasons for the failure to comply with the 60-day requirement were that Individual A was mentally incapacitated and was unable to obtain access to the funds due to the intransigence of Individual B.

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 D. 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 IRA Y, 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.

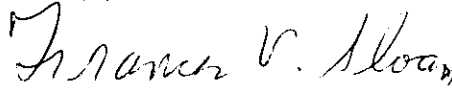
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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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

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frances V. Sloan".

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

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: