

FEB 18 2005

Uniform Issue List: 408.03-00

Legend:


Bank M =

IRA X =

Amount A =

Date 1 =

Date 2 =

Dear  :

This is in response to correspondence dated November 10, 2003, as supplemented by correspondence dated December 11, 2004 and a telephone conversation with a representative of this office on January 24, 2005, 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:

You are 80 years old and have been diagnosed with incurable cancer, for which you are being treated. In addition, your wife has been treated for medical conditions arising from having had open heart surgery and two strokes, and has been hospitalized.

You maintained an Individual Retirement Arrangement (IRA) with Bank M. On Date 1, you requested a complete distribution from IRA X, your IRA. On that date, you received a total distribution from IRA X of Amount A. This was paid to you by six cashiers' checks. The purpose of this distribution was to assist your son with a problem. Soon after that, your son advised you that he had made arrangement to solve the problem on his own. You cashed only two of the checks. The funds from these cashed checks are being held in a safe deposit box. During the 60-day period after receiving the distribution from IRA X, you received medical treatments, including chemotherapy and tests, for your cancer. In addition, your wife's surgery

prior to the distribution, and the two subsequent strokes, put added demands on you as her caretaker.

On Date 2, shortly after the expiration of the 60-day rollover period, you returned to Bank M with the intent of rolling over Amount A back into IRA X. Amount A is intact; no funds have been used for any purposes. On that date, Bank M informed you that there is a sixty-day time limit for returning funds to an IRA. You did not know that there was a 60-day rollover requirement for Amount A to be rolled over into a Rollover IRA.

Based on these facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code regarding Amount A.

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

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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 your medical condition and the treatments necessary to contain your cancer, as well as the medical conditions of your wife and your role in her health care, prevented you from timely placing Amount A into a Rollover IRA.

Therefore, 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 A (less amounts described below). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A (less amounts described below) into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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).

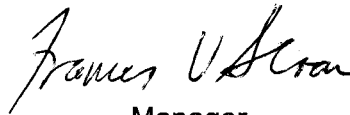
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter expresses no opinion as to whether IRA X 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.

If you wish to inquire about this ruling, please contact _____, I.D. # _____, at _____.
Please address all correspondence to _____.

Sincerely yours,



, Manager

Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose