



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200634067

APR - 7 2006

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =

Financial Advisor B =

IRA X =

Plan Y =

Amount A =

Amount B =

Amount C =

Amount D =

Company A =

Company B =

Date 1 =

Date 2 =

Date 3: =

Month 1 =

Dear :

This is in response to your request dated \_\_\_\_\_, as  
supplemented by correspondence received in the Internal Revenue Service on

, in which you request 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, who has attained age 70 1/2, represents that he maintains IRA X, described in section 408(a) of the Code, and is a participant in Plan X, described in Code section 401(a). Because Taxpayer A has attained his "required beginning date", as defined in Code section 401(a)(9)(C), Taxpayer A is required to receive minimum required distributions from both IRA X and Plan Y.

On or about Date 1, 2005, Taxpayer A met with his financial advisor, Financial Advisor B of Company B, to determine his Code section 401(a)(9) minimum required distributions for calendar year 2005. Financial Advisor B advised Taxpayer A that he could combine his Plan Y and IRA X required distributions and take both from IRA X. Based on that assumption, Taxpayer A withdrew Amount A from IRA X the next day, and on Date 2, 2005, Taxpayer A withdrew an additional Amount B from IRA X.

During Month 1, 2005, Company A which administered Plan Y advised Taxpayer A that he was required to receive a minimum required distribution from Plan Y for calendar year 2005, and that he could not receive his 2005 Plan Y required distribution from IRA X. Pursuant to said advice, Taxpayer A withdrew Amount C from Plan Y on Date 3, 2005.

Subsequent to being advised by Company A that he had to receive a Plan Y distribution for calendar year 2005, Taxpayer A recontacted his financial advisors who advised him that Company A was correct and, additionally, that the 60-day rollover period(s) applicable to both of his IRA X distributions had expired.

It has been represented that Amount D represents the difference between the amount which Taxpayer A withdrew from IRA X and the amount which Taxpayer A was required to withdraw from his IRAs.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount D from IRA X.

With respect to your ruling request, 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.

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 indicates that he had no intent to accomplish a rollover at the time of distribution and that there was no failed or interrupted rollover transaction. Additionally, the erroneous advice given Taxpayer A did not relate to a rollover transaction. Rather, Taxpayer A received the IRA X distributions on the mistaken belief that required minimum distributions from both IRA X and Plan Y could be combined and taken from IRA X. We do not believe that Congress, by enacting Code section 408(d)(3)(I), intended to permit the Service to retroactively undo Taxpayer A's IRA distribution choice because it did not produce the expected benefit even though the choice was the result of erroneous advice provided to Taxpayer A by his financial consultant, Financial Advisor B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

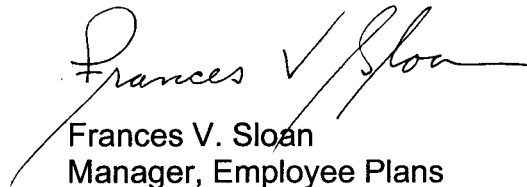
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

200634067

If you wish to inquire about this ruling, please contact  
, Esquire ( ) at ( ) . Please  
address all correspondence to SE:T:EP:RA:T:3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in black ink and is positioned above the typed name and title.

Frances V. Sloan  
Manager, Employee Plans  
Technical Group 3

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