



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200415012

JAN 15 2004

*Uniform Issue List: 408.03-00*

*SE: T. EP. RA. T3*

**Legend:**

Individual A =  
Amount D =  
Bank F =  
Bank G =  
Bank H =  
Firm J =  
IRA X =  
IRA Y =

Dear

This is in response to a request submitted on your behalf by your authorized representative by letter dated October 10, 2003, 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 December 24, 2003, supplemented the request.

Your representative has submitted the following facts and representations:

Individual A was your husband. Individual A maintained IRA X with Bank F as custodian. On \*\*\*\*\*, Individual A withdrew Amount D from IRA X, which he deposited in his personal account at Bank G sometime during the month of \*\*\*\*\*.

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Individual A passed away on \*\*\*\*\* , \*\*\*\*.

You were the sole beneficiary of Individual A's IRA X. Furthermore, as of the date of this ruling request, neither you nor he had attained, or would have attained age 70 ½.

On \*\*\*\*\* , \*\*\*\* , you withdrew the Amount D from Bank G and deposited Amount D, as a rollover contribution, into IRA Y. IRA Y is held in Firm J with Bank H as custodian. Firm J is a subsidiary of Bank H. \*\*\*\*\* , \*\*\*\* , was beyond the 60 period allowed for rollovers.

Your authorized representative has asserted on your behalf that during the period beginning \*\*\*\*\* , \*\*\*\* and ending \*\*\*\*\* , \*\*\*\* , you were in mourning over the death of your husband, Individual A. Additionally, you were involved in handing funeral arrangements for your husband. Furthermore, as soon as reasonably possible after his funeral, you began to care for your husband's estate including, but not limited to, his financial affairs. It was while caring for his estate that you completed the "rollover" referenced above.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amounts 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, your husband, withdrew an amount from IRA X and died within the 60-day period proscribed by section 408(d)(3)(A) of the Code without having rolled over the IRA X distribution into another IRA. The information also shows that you were individual A's wife as of the date of his death, and were the sole beneficiary of Individual A's IRA X. Furthermore, it shows that you have attempted to roll over said IRA X distribution into an IRA set up in your name to benefit you which, as Individual A's widow, you were entitled to do. However, said "rollover" was accomplished outside the requisite 60-day period. The information presented indicates that the reason for the failure to comply with the 60-day requirement was the death of Individual A, your husband, which effectuated the delay this caused in your handling of his financial affairs. Finally, this request for a letter ruling was submitted shortly after your attempted rollover and shortly after you discovered that the "rollover" failed to comply with the requirements of section 408(d)(3) of the Code.

Based on the above, we conclude that a refusal to waive the 60-day requirement found in section 408(d)(3)(A) would be against equity and good conscience.

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 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

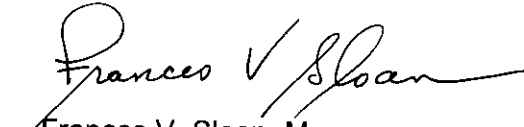
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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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If you wish to inquire about this ruling, please contact \*\*\*\*\* (ID \*\*-\*\*\*\*) 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 ruling letter
- Notice of Intention to Disclose

CC: