

200850055

Department of Treasury
Internal revenue Service

Uniform Issue List: 408.03-00

SEP 18 2008

Legend:

Individual A =

IRA X =

Amount 1 =

Amount 2 =

Amount 3 =

Company M =

Bank B =

Dear

This is in response to correspondence dated June 7, 2008, as supplemented by correspondence dated July 21, 2008, in which your authorized representative requested on your behalf 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:

Individual A is 87 years old. In the last year, Individual A has been showing signs of forgetfulness and loss of cognitive ability.

Prior to 2007, Individual A received the required minimum distributions from her Individual Retirement Arrangement (IRA), IRA X. These required minimum distributions began when Individual A attained age 70 ½. IRA X is maintained by Company M. On November 7, 2007, Company M issued a distribution check to Individual A from IRA X of Amount 1. On November 13, 2007, Individual A received this distribution from IRA X

and deposited Amount 1 in a personal checking account with Bank B. She had not requested a distribution in an amount in excess of the required minimum distribution which she had received in prior years.

Proximate to the time that Individual A received the IRA X distribution, she was preparing to have cancer surgery. The surgery occurred on November 21, 2007. This added stress and distraction took her attention away from fully examining the distribution from IRA X.

In early February 2008, when Individual A was gathering her tax information for 2007, she realized that Amount 1 was a distribution in excess of her prior yearly required minimum distributions from IRA X and not the required minimum distribution that she had wanted to receive. It has been represented that the required minimum distribution for 2007 was Amount 2.

Amount 1 minus Amount 2 equals Amount 3.

Individual A believes that the distribution of Amount 1, rather than Amount 2, was a misunderstanding and inadvertent mistake on the part of the Company M broker who managed IRA X on her behalf. Since the date Individual A deposited the distribution of Amount 1 in her personal checking account, Amount 1 has not been withdrawn or used for any purposes.

It has been represented that there have been no rollovers in the last 12 months from or to IRA X.

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

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)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

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 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 and documentation submitted on behalf of Individual A is consistent with her assertion that her failure to accomplish a timely rollover was caused by a misunderstanding and inadvertent mistake on the part of the Company M broker who managed IRA X on her behalf. This misunderstanding and inadvertent mistake caused the distribution of an amount in excess of the required minimum distribution, which was the intent of Individual A. Individual A's mental condition at the time of this distribution, due to the stress of her forthcoming surgery and her general decline in cognitive abilities, impaired her ability to accomplish a timely rollover.

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 3 from IRA X. Individual A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 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 contribution, Amount 3 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).

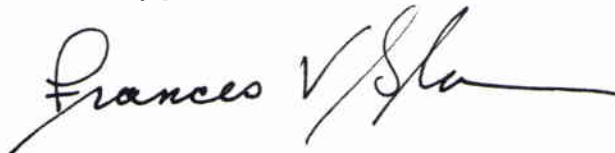
This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact _____, I.D. # _____ at _____. Please address all correspondence to _____.

Sincerely yours,

A handwritten signature in black ink that reads "Frances V. Sla". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Employee Plans Technical Group

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