

200910068



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

DEC - 9 2008

*Uniform Issue List: 408.03-00*

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SE: T: EP: RA: T3

**Legend:**

Taxpayer A	=	***
IRA X	=	***
Account Y	=	***
Company A	=	***
Company B	=	***
Amount A	=	***
Amount B	=	***
Amount C	=	***
Amount D	=	***
Date 1	=	***
Date 2	=	***
Date 3	=	***
Date 4	=	***
Advisor X	=	***

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Dear \*\*\*:

This is in response to your request dated September 25, 2008, submitted on your behalf by your authorized representative, 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, age 88, asserts that on Date 1 she received notice of distribution from IRA X, an individual retirement annuity (IRA), totaling Amount A. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408 (d) (3) of the Code was due to Company A's claim that Taxpayer A's age precluded a rollover of the distribution into a new IRA. Taxpayer A further represents that Amount A has not been used for any other purpose.

In January , Taxpayer A met with Advisor X in order to review her investments in Company A. Taxpayer A maintains Account Y, a non-qualified annuity, with Company A. Advisor X advised Taxpayer A to move funds from Account Y to an account with Company B in order to have the funds placed into a FDIC-insured account. Taxpayer A verbally agreed to the transaction. Advisor X was unaware that Taxpayer A maintained both IRA X and Account Y with Company A.

Advisor X spoke by phone with a representative of Company A and arranged a transfer of funds between Company A and Company B. Advisor X's intent was to transfer funds from Account Y to an account with Company B. The account number for IRA X was erroneously listed on the withdrawal form. Advisor X prepared the withdrawal of funds form and presented the form to Taxpayer A for her signature. Taxpayer A signed the withdrawal form. The withdrawal form identified the IRA X account number but did not identify the account as an IRA. Advisor X assured Taxpayer A that the funds were being taken from Account Y. Taxpayer A had instructions on file with Company A not to withdraw more than the required minimum distribution from IRA X in any given year. The confusion of accounts resulted in funds being distributed in error from IRA X rather than Account Y.

On Date 1, Taxpayer A discovered that Company A had made a distribution from IRA X when she received notice of the transaction from Company A. The notice stated that Amount C was withheld in federal income taxes and that Amount D was forwarded to Company B. Taxpayer A immediately contacted Company B in order to remedy the error. Company B voided the distribution check and returned the voided check back to Company A. As a remedy, Taxpayer A sought to roll over the distributed funds into an IRA with Company B.

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In a letter issued on Date 2, Company A denied Taxpayer A's request to effectuate a redeposit of the distribution to IRA X or a rollover of the distribution from IRA X into another IRA. In the letter, Company A states that Taxpayer A's age precluded a rollover of the distribution into a new IRA.

Taxpayer A has submitted documentation reflecting that from Date 3 to Date 4, Taxpayer A was hospitalized and was treated several different times at various medical facilities for deteriorating health. From Date 3 to Date 4, Taxpayer A was persistent in contacting numerous federal, state and local agencies in attempts at resolving this matter. After a great deal of effort, Taxpayer A was referred by a federal agency to the current authorized representative.

To date, Company A remains in possession of the distribution and Taxpayer A has not received any of the money from the distribution.

Amount B is the gross distribution amount, Amount A, minus the required minimum distribution amount.

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 B 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 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

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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) (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 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) 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 by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by the erroneous distribution of Amount A from IRA x and Company A's claim that Taxpayer A's age precluded a rollover of the erroneous distribution into a new 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 B from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B 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 B will be considered a rollover contribution within the meaning of section 408 (d) (3) of the Code.

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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).

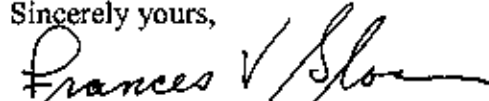
This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

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 letter ruling 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 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  
Copy to Power of Attorney