

200920059

Department of the Treasury  
Internal Revenue Service

FEB 20 2009

*Uniform Issue List: 408.03-00*

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SE; T:EP:RA: T3

**Legend:**

IRA X = \*\*\*  
Amount A = \*\*\*  
Date 1 = \*\*\*  
Date 2 = \*\*\*  
Company A = \*\*\*

Dear \*\*\*,

This is in response to a request submitted on your behalf by your authorized representative dated June 30, 2008, as supplemented by correspondence dated December 5, 2008, 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:

You have not attained age 70 ½. You had an Individual Retirement Arrangement (IRA), IRA X, which was maintained by Company A. You represent that a distribution was made from IRA X and that the distributed amount was not invested in an IRA as you intended. This distribution was made on Date 1 and totaled Amount A.

You assert that your failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408 (d) (3) was due to the actions of a financial representative of Company A and your lack of knowledge regarding the investment of the distribution. A financial representative of Company A effectuated a distribution on Date 1. Company A discovered the distribution on or before Date 2. Company A notified you when they discovered that the above-referenced financial representative had used the distributed funds for his own benefit and contrary to your intention that Amount A remain in an IRA. You and Company A have entered into a settlement agreement pursuant to which Company A is holding funds totaling Amount A for your benefit

pending the Service's response to this ruling request. You seek a ruling waiving the 60-day period to roll over Amount A.

Based on the facts and representations stated above, the following rulings are requested:

1. You request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408 (d) (3) of the Code regarding Amount A.
2. You request a ruling the Internal Revenue Service allow a reasonable amount of interest accrued during the distributed period related to Amount A to be rolled over.

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 D 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 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.

With respect to your first ruling request, the information presented and documentation you submitted is consistent with your assertion that your failure to accomplish a timely rollover was caused by the unauthorized use of the IRA X distribution totaling Amount A.

Therefore, pursuant to section 408 (d) (3) (I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to distribution totaling Amount A from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A 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, contributing Amount A into one or more IRAs described in Code section 408(a) will be considered a rollover contribution within the meaning of section 408 (d) (3) of the Code.

With respect to your second ruling request, waiver of the 60-day requirement allows for a rollover of the amount distributed from the qualified plan or qualified retirement account but does not allow for the rollover of interest accrued during the distributed period.

Therefore, pursuant to section 408 (d) (3) (A) of the Code, in response to your second ruling request, the Service concludes as follows:

A reasonable amount of interest accrued during the distributed period with respect to Amount A may not be rolled over, and the contribution of said interest into one or more IRAs described in Code section 408(a) will not constitute a tax-deferred rollover within the meaning of Code section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401 (a) (9) of the Code, made applicable to IRAs pursuant to section 408 (a) (6).

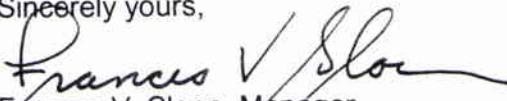
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be

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applicable thereto. This letter expresses no opinion as to whether IRA X 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.

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 \*\*\*. 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:

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