

JUN 20 2005

SE:TEP:RA:73

Uniform Issue List: 408.03-00

Legend:

Insurance Company Salesman A =

Surviving Spouse B =

Amount D =

Amount E =

Amount F =

IRA X =

IRA Y =

Dear \_\_\_\_\_

In letters dated July 15, 2004, and October 29, 2004, your authorized representative requested 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:

Surviving Spouse B's husband died on \_\_\_\_\_ Surviving Spouse B, age \_\_\_\_\_ as the named beneficiary of her husband's IRA, IRA X, planned to roll over to her own IRA, any proceeds from IRA X. IRA X was invested in two section 408(c)(3) annuities. In \_\_\_\_\_ IRA X funds were distributed to Surviving Spouse B. Insurance Company Salesman A brought the two checks from the proceeds of the policies in Amount D and Amount E to Surviving Spouse B. Insurance Company Salesman A informed Surviving Spouse B that the two checks were from death benefits

and were not subject to income tax. Surviving Spouse B did not roll over the funds into an IRA within the 60-day rollover period, which expired in \_\_\_\_\_

Surviving Spouse B first became aware of a problem when she was preparing her year \_\_\_\_\_ federal income tax return in \_\_\_\_\_ after she received a corrected Form 1099R showing Amount D and E as taxable IRA distributions and not as nontaxable death benefits.

On April 9, 2004, Surviving Spouse B wrote to the Internal Revenue Service seeking advice. On \_\_\_\_\_ Surviving Spouse B deposited Amount F, the sum of Amounts D and E, into IRA Y and requested this waiver of the 60-day rollover period.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount F from IRA X.

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 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 occur 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 Surviving Spouse B demonstrates that her reliance on erroneous tax information given her by Insurance Company Salesman A, who handled the distribution from her husband's IRA, caused her to miss the 60-day deadline. Surviving Spouse B is not a financial professional and she believed the advice she received that the distribution from IRA X was a non-taxable death benefit. Surviving Spouse B did not realize that Amounts D and E were taxable and as such were eligible to be rolled over until after the 60-day rollover period had expired.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount F. Pursuant to this ruling letter, the Service will treat Surviving Spouse B's July 4, 2004, rollover contribution of Amount F into IRA Y as a valid rollover contribution within the meaning of Code section 408(d)(3).

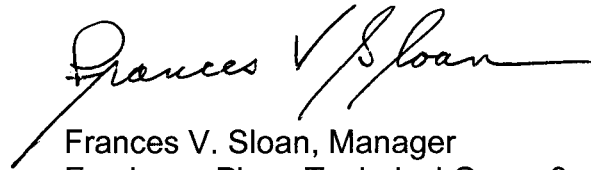
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

If you wish to inquire about this ruling, please contact \_\_\_\_\_ I.D. # \_\_\_\_\_  
at \_\_\_\_\_ Please address all correspondence to SE:T:EP:RA:T3.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

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 printed name.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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