

INTERNAL REVENUE SERVICE

200602049

Uniform Issue List: 408.03-00

OCT 18 2005

SE.T:EP:RA:WC

Legend:

Individual A =

Company B =

IRA X =

Account C =

Amount 1 =

Amount 2 =

Amount 3 =

Company D =

Dear [REDACTED]:

This is in response to correspondence dated July 22, 2005, as supplemented by correspondence dated October 5, 2005, in which you 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:

Your husband, Individual A, died on January 18, [REDACTED]. Individual A maintained an Individual Retirement Arrangement (IRA), IRA X, and a life insurance contract with Company B. Although you knew that IRA X was an annuity, you were not aware that it was an IRA. You are the surviving spouse of Individual A and were named as beneficiary of IRA X. You were also the beneficiary of Individual A's life insurance contract. Your date of birth was March 1, [REDACTED].

After his death, you received a letter from Company B referring to your death claim proceeds. This letter stated that your insurance claim had been processed and that Account C had been established in your name with the proceeds of your claim. Account C was a non-IRA account. Your monthly Account C statement confirmed that Amount 1 had been deposited into Account C on February 18, [REDACTED] and Amount 2 had been deposited into Account C on February 19, [REDACTED]. There was no indication in the letter from Company B or the Account C monthly statement that any of the funds which were deposited into Account C were ever held in an IRA.

On June 1, [REDACTED] you withdrew Amount 3 from Account C and deposited it into an account maintained with Company D. This Company D account was a non-IRA account. Amount 3 exceeded Amount 1.

In January [REDACTED] you received a Form 1099-R from Company B which indicated that Amount 1 had been distributed from an IRA. When you brought this form to your tax preparer, you were informed that the Form 1099-R was for a retirement account which had been distributed to Account C. It was at this point that you discovered that the annuity maintained with Company B, IRA X, was an IRA. If you had known that the annuity maintained as IRA X was an IRA, you would have informed Company B to transfer the proceeds to an IRA established in your name. You currently maintain an IRA with Company D. No amount of the distribution from IRA X has been withdrawn or used for any purposes.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement 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)(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 which you have submitted provides that you were not aware that the annuity maintained by Individual A, IRA X, was an IRA. Subsequent to Individual A's death, Company B, which maintained IRA X and a life insurance contract for Individual A, did not inform you that the contribution into Account C of the death proceeds from these accounts included amounts distributed from an IRA. In correspondence you received from Company B regarding the annuity distribution, there was no indication that the funds had been held in an IRA annuity.

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 1. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a Rollover IRA set up and maintained in your name. 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 contribution of Amount 1 in your IRA will be considered a rollover contribution within the meaning of section 408(d)(3) 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 expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

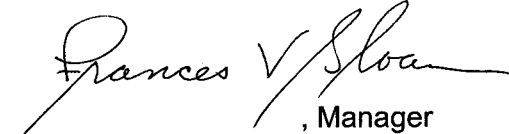
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact \_\_\_\_\_, I.D. # \_\_\_\_\_, at  
(not a toll-free number). Please address all correspondence to \_\_\_\_\_.

Sincerely yours,

  
\_\_\_\_\_, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose