

Uniform Issue List: 408.03-00

OCT 26 2005

Legend:

IRA X =

Amount A =

Company M =

Dear [REDACTED] :

This is in response to correspondence dated April 15, 2005, as supplemented by correspondence dated September 2 and 16, 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:

You are 65 years old. On April 4, 2004, you were hospitalized and diagnosed as having had an intracerebral hemorrhage (stroke). Due to this, you spent a week in the hospital and months in rehabilitation therapy. On May 10, 2004, you withdrew Amount A from your Individual Retirement Arrangement (IRA), IRA X, which was maintained with Company M. Your intention was to place Amount A into a Rollover IRA which would be established with a different investment company offering a higher rate of return. However, you continued to suffer from the after effects of this medical condition, including changes in your memory, speech, judgment, and mobility. After the stroke, you were unable to drive or leave your house unescorted, and you also ceased employment. Further, the stroke also caused you to experience severe depression which impaired your ability to make financial decisions and resulted in your neglecting to take care of many pressing financial and business matters.

After you withdrew Amount A from IRA X, you deposited Amount A into a savings account. On July 13, 2004, within days of the expiration of the 60-day rollover period, you returned Amount A to IRA X. At that time, representatives of Company M informed you of the 60-day rollover requirement. No part of Amount A had been withdrawn or used for any purposes, other than returning Amount A to IRA X. Amount A remains in IRA X.

Based on these facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code regarding Amount A.

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 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)(l) 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)(l) 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)(l) 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 you presented demonstrates that your stroke and the resulting disability caused you to fail to timely place Amount A into a Rollover IRA within the 60-day rollover period. Because of the changes in your memory, speech, judgment, and mobility, as well as severe depression which resulted in your neglecting to take care of many pressing financial and business matters, you were unable to roll over your distribution from IRA X on a timely basis.

Therefore, the July 13, 2004 rollover into IRA X, described above, is deemed to have been made within the time frame prescribed by section 408(d)(3)(A) of the Code. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such rollover contribution, the July 13, 2004 contribution of Amount A into IRA X is considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

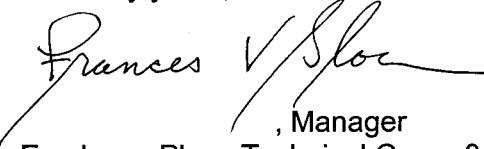
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter expresses no opinion as to whether IRA X 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.

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