

INTERNAL REVENUE SERVICE

200606055

NOV 17 2005

**Uniform Issue List: 408.03-00**

Legend:

Taxpayer A =

IRA X =

Amount A =

Company A =

Dear 

This is in response to your request dated March 17, 2005, as supplemented by correspondence dated August 26, 2005, 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 56, represents that she received a distribution from IRA X, maintained with Company A, totaling Amount A with the intent to improve the performance of the account by rolling over Amount A into another IRA. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error on her part in computing the 60-day rollover period, and to necessary medical care given to herself; her husband, and her mother, which at times, required travel on the part of Taxpayer A.

In this regard, Taxpayer A asserts that she believed that when the 60th day fell on a weekend or holiday, she had until the next business day to accomplish a rollover. In support of this proposition, Taxpayer A asserts that she attempted to roll over Amount A into an IRA two days after the expiration of the 60-day period.

Taxpayer A also represents that Amount A has not been used for any purposes and was available to be rolled over during the 60-day period and remains available 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 found in section 408(d)(3) of the Code with respect to the distribution of 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 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)(l) 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)(l) of the Code.

Rev. Proc. 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), 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 Taxpayer A demonstrates a failure on the part of Taxpayer A to accomplish her intended rollover because of a misunderstanding as to the proper time-frame within which a tax-deferred rollover is required to be completed. Further, Taxpayer A acted in conformance with her belief and attempted to redeposit Amount A into her IRA shortly after the expiration of the 60-day period. In addition, Taxpayer A was faced with serious medical care issues during the 60-day period.

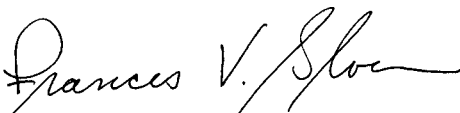
Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount A into an 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 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 [REDACTED]  
I.D. # [REDACTED] at [REDACTED] 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 letter ruling  
Notice of Intention to Disclose