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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

NOV 29 2005

SE. T. EP. RA. T3

*Uniform Issue List: 408.03-00*

**Legend:**

Insurance Company A =

Bank B =

Amount D =

Amount E =

Amount F =

Date L =

Date M =

Date N =

Date O =

IRA X =

Dear

This is in response to your request dated September 21, 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"). Correspondence dated November 18, 2005, supplemented the request.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested

You are under 70 ½ and maintained IRA X (an individual retirement arrangement described in section 408(a) of the Code) at Insurance Company A. IRA X contained

Amount D. On Date L, 2005 you received a distribution from IRA X in the amount of Amount D, with the intent of rolling that money over into another IRA which would give you a better return on your investment. On Date M, one day after the distribution, you deposited the money in Bank B while you looked for another IRA to invest in within the 60 days.

On Date N, your daughter passed away. The 60 day rollover period expired on Date O, 2005, shortly after your daughter passed away. Because you were dealing with issues surrounding the death of your daughter, you were unable to complete the rollover within 60 days. On Date O, 2005, two days after the rollover period expired, you attempted to rollover the funds. However, because you had missed the rollover date, the bank would not accept the funds.

You also state that you used part of the distribution, Amount E, for your personal expenses.

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 F ( the difference between the amount distributed (Amount D) and the amount that you used(Amount E)) 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)(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 and documentation submitted by you is consistent with your assertion that your failure to accomplish a timely rollover was caused by your grief following the death of your daughter. Also, you attempted to rollover the funds within two days after the time for completing the rollover had expired.

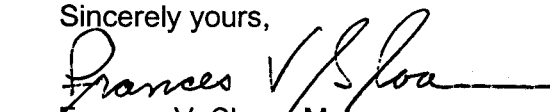
Therefore, pursuant to section 408(d)(3)(l) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount F from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount F into another IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount F 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 \*\*\*\*\* (ID \*\*-\*\*\*\*) at (\*\*\*) \*\*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T :T3

Sincerely yours,

  
Frances V. Sloan, Manager,  
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose