

INTERNAL REVENUE SERVICE

Uniform Issue List: 408.03-00

200453027

OCT - 4 2004

Legend:

Individual A =

Company B =

Bank C =

Amount D =

S.E.T. EP. PA. T9

Dear [REDACTED] :

This is in response to correspondence dated March 31, 2004, as supplemented by correspondence dated September 20, 2004, submitted on your behalf by your authorized representative 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 in [REDACTED]. One of the assets in Individual A's estate was an Individual Retirement Annuity (IRA) that had been established with and maintained by Company B. As the surviving spouse, you are the beneficiary of this IRA.

You are in the second stage of Alzheimer's disease and live in an assisted living facility. You have granted your daughter a durable power of attorney. Due to this, although your daughter is not a tax professional, she assumed the responsibilities of settling Individual A's estate, selling the farm and consolidating finances from your home town to another city. In the course of trying to consolidate your investments in late [REDACTED] and early [REDACTED], your daughter sold all of your and Individual A's investments and moved them to accounts at Bank C.

As part of this action, your daughter requested distribution of Individual A's annuity held by Company B. Your daughter was not aware that Individual A's annuity held by Company B was an IRA. In correspondence your daughter received from Company B regarding the distribution request, there was no indication that the funds were being held in an IRA. On February 21, 2003, your daughter received two checks from Company B from the liquidation of Individual A's IRA. The amount of these two checks equaled Amount D. Your daughter deposited Amount D into a certificate of deposit with Bank C

on [REDACTED]. The broker/dealer that your daughter worked with at Bank C did not state that Individual A's annuity was an IRA. In addition, the Bank C broker/dealer did not discuss spousal options that you would have as beneficiary to the annuity. Since no funds have been withdrawn from this certificate of deposit with Bank C; Amount D remains intact.

In correspondence dated January 6, 2003 from Company B, although your daughter received an annuity transaction confirmation indicating that Individual A's annuity was an IRA, she did not notice that the letter referred to the annuity as an IRA.

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.

You are in the second stage of Alzheimer's disease, live in an assisted living facility, and have granted your daughter a durable power of attorney. Due to this, you are dependent on your daughter to make financial and tax decisions for you, even though she is not a tax professional. Your daughter was not aware that Individual A's annuity held by Company B was an IRA. In correspondence your daughter received from Company B regarding the distribution request, there was no indication that the funds were being held in an IRA.

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 D. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D 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 contributions, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6).

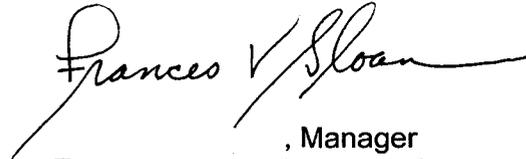
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact

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 and title.

, Manager  
Employee Plans Technical Group 3

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