

200506029

NOV 17 2004

Uniform Issue List: 408.03-00

SE: T. EP: RA: T3

Legend:

Decedent A =

Surviving Spouse B =

Amount D =

Bank F =

Dear [REDACTED]

In a letter dated May 27, 2004, your authorized representative 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:

Surviving Spouse B and Decedent A were married to each other. Decedent A died on March 16, 2004, as a result of ALS (Amyotrophic Lateral Sclerosis - Lou Gehrig's Disease).

Decedent A, had established a rollover Individual Retirement Account (IRA) at Bank F. Surviving Spouse B is the sole beneficiary of Decedent A's IRA account.

On [REDACTED], Decedent A withdrew funds, in Amount D, from his Bank F IRA account. The withdrawal was made by a direct transfer by Bank F into Decedent A's joint checking account at Bank F.

Surviving Spouse B attempted to rollover the funds received from the IRA distribution, back in her now deceased husband's IRA account, to facilitate a rollover of such funds

into her IRA. However, Bank F would not permit her to rollover the funds, because the 60-day period to replace the funds had been missed by 2 days. The 60-day period expired on [REDACTED]. Surviving Spouse B believed the 60 day period of time was 60 business days, and not 60 calendar days, which was not explained by her husband, nor was it explained properly by the bank's written instructions.

The severe stress of Surviving Spouse B dealing with her husband's debilitating medical condition, its progression, and his death, contributed to the Surviving Spouse B's failure to rollover timely.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and against equity or good conscience.

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 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)(I) 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)(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), 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 Surviving Spouse B demonstrates mistake on the part of Surviving Spouse B in calculating the 60-day period which caused her to miss the 60-day deadline by 2 days. Additionally, the death of Surviving Spouse B's husband, his prolonged illness, and Surviving Spouse B's lack of accounting knowledge, contributed to her mistake.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount D. Pursuant to this ruling letter, Surviving Spouse B is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount D, to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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 [REDACTED].

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

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.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose