

INTERNAL REVENUE SERVICE

200508024

Uniform Issue List: 408.03-00

DEC - 2 2004

SE: T: EP: PAT 3

Legend:

IRA X =

Firm M =

Amount A =

Date 1 =

Dear :

This is in response to your correspondence dated August 6, 2004, as supplemented by your correspondence dated September 16, 2004, 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 a practicing [REDACTED] and are currently the [REDACTED] at a [REDACTED]. You have many demands on your time from your medical responsibilities, including being on medical call on a regular basis, both all night and on weekends. Your husband had been handling your finances, as well as being responsible for paying all of the household bills for several years.

You had a Simplified Employee Pension, IRA X. In January 2003, your husband told you that his son from a prior marriage was starting a new business and that his son needed a short-term loan to get the business started. To obtain this loan, you permitted your husband to sell all of the stock, bonds and mutual funds in IRA X and use the proceeds for the loan to his son. You were extremely reluctant to take any distribution from IRA X. Your husband told you that the financing would be for only 30 days. Your husband repeatedly assured you that his son would be able to repay the loan within 30 days. On January 7, 2003, Amount A was distributed from IRA X. Your husband received the check without your permission and provided Amount A directly to his son.

In February 2003, your husband fraudulently told you that the loan to his son had been repaid in full and that Amount A had been deposited into IRA X. He also advised you

that he was working with Firm M to identify appropriate investment vehicles for the repaid Amount A.

On Date 1, [REDACTED], your husband committed suicide. In the weeks after his death, when you began to assemble the information needed to prepare your [REDACTED] Federal tax return, you discovered that the loan to his son had not been repaid and that Amount A had not been deposited into IRA X. If you had known that your husband and his son had not repaid Amount A into IRA X, you would have demanded that the loan be repaid immediately.

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(k)(1) of the Code provides, in part, that the term "simplified employee pension" (SEP) means an individual retirement arrangement (IRA) which meets the requirements of paragraphs (2), (3), (4) and (5).

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)(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.

The information you presented demonstrates that you relied upon your husband's assurance that the distribution from IRA X, Amount A, would be a short-term loan which would be repaid within 30 days. He fraudulently told you that Amount A had been returned to IRA X within the 60 day rollover period. Because of your reliance upon this fraudulent information, you did not realize that Amount A had not been timely recontributed to an IRA and that you had a taxable distribution from IRA X.

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 A. You are 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 contributions, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

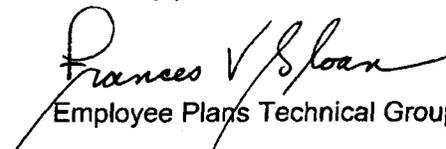
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter expresses no opinion as to whether the IRA X 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 \_\_\_\_\_, at \_\_\_\_\_. Please address all correspondence to \_\_\_\_\_.

Sincerely yours,

  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose