

DEC 28 2004

SE.T.EP.RA.T 3

Legend:

IRA X =

IRA Y =

Amount A = \$

Amount B = \$

Amount C = \$

Individual M =

Dear Mr. :

This is in response to correspondence dated September 4, 2004, as supplemented by correspondence dated November 22, 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:

You are a resident of a nursing home and depend on others for help with most of your affairs. Individual M managed your money and involved herself in your financial affairs. Individual M advised you that it was necessary to withdraw funds from your individual retirement arrangement (IRA) to pay your bills for the rest of the year of withdrawal. During [REDACTED] you withdrew Amount A from IRA X for this purpose. However, none of your bills were paid and Individual M deposited the funds into her own personal account. You had no access to this account. Individual M used the funds for herself and some members of her family. In addition, Individual M also removed funds from other non-IRA accounts which you maintained and charged unauthorized expenses using your credit card. Members of your family became aware of the situation and on October 6, 2003 they hired a law firm in an attempt to recover the money.

In correspondence from the law firm, you were informed that legal actions undertaken on your behalf against Individual M resulted in a settlement. Amount B, which was the settlement amount after the payment of the law firm's expenses, was sent to you by wire transfer on February 18, 2004. After paying the balance due to your nursing home, you deposited Amount C into IRA Y on [REDACTED]. Amount C is less than Amount A.

Based on these facts and representations, you request a ruling that the Service waives the 60-day rollover requirement contained in section 408(d)(3) of the Code regarding Amount C.

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.

The information you presented demonstrates that you relied upon the financial assistance provided to you by Individual M, who fraudulently told you that the distribution from IRA X would be used to pay your bills for the remainder of the year [REDACTED]. Instead, this distribution was placed into Individual M's personal account and used for her and her family's personal expenses. Because of your reliance upon fraudulent information provided to you by Individual M, you did not realize that Amount A was not being used to pay for your expenses and that, although Individual M was using your IRA funds, you had a taxable distribution from IRA X. You were able to recover funds which you rolled over into IRA Y after retaining the services of a law firm, and after the 60-day rollover period had expired.

Therefore, the [REDACTED] deposit of Amount C into IRA Y, described above, is deemed to have been a timely made rollover within the meaning of section 408(d)(3)(A) of the Code. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such rollover contribution, the April 15, 2004 contribution of Amount C into IRA Y is considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

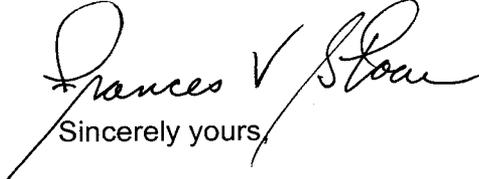
In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, if any, made applicable to an IRA pursuant to Code section 408(a)(6).

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 either IRA X or IRA Y 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, the original of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact _____, I.D.# _____, at _____. Please address all correspondence to _____.


Sincerely yours,

Enclosures:

- Copy of letter ruling
- Deleted copy of letter ruling
- Notice of Intention to Disclose