



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JAN - 4 2005

Uniform Issue List: 408.03-00

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Legend

Taxpayer A =	***
Taxpayer B =	***
Taxpayer C =	***
Taxpayer D =	***
Taxpayer E =	***
Trust F =	***
IRA G =	***
IRA H =	***
Estate I =	***
Amount J =	***
Investment Firm K =	***
Account L =	***

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Dear \*\*\*:

This is in response to your letter dated April 16, 2004, supplemented by faxed information dated June 30, 2004, in which you request, through your authorized representative, a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

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

On [REDACTED] Taxpayer A, as grantor, and Taxpayer B, as Trustee, entered into an irrevocable trust agreement for Trust F. This agreement provided for the discretionary distribution of income and principal to Taxpayer A's wife, Taxpayer C. This agreement also provided that if Taxpayer C predeceased Taxpayer A, then on Taxpayer A's death the trust principal would be distributed outright to Taxpayer A's children, namely, Taxpayer B, Taxpayer D, and Taxpayer E.

Taxpayer A named Trust F as the beneficiary of his IRA G, an individual retirement account ("IRA") described in Code section 408(a). Through mergers, IRA G became IRA H held with Investment Firm K.

On [REDACTED] Taxpayer C died.

On [REDACTED] Taxpayer A died. Taxpayer B was appointed executor of Estate I. On the date of Taxpayer A's death, IRA H's value was Amount J.

Taxpayer B requested that Investment Firm K transfer IRA H to Trust F in order to effectuate a rollover of IRA H into another IRA. On [REDACTED] Taxpayer B received forms from Investment Firm K to, as explained in Investment Firm K's cover letter, transfer IRA H to an Estate I account and "to transfer the IRA Rollover account into the irrevocable trust account." On [REDACTED] Taxpayer B signed and submitted the Investment Firm K distribution request form that was enclosed with the letter in order to accomplish a distribution "By Journal" of the IRA H account value to Trust I's account at Investment Firm K. This form had been filled out by Investment Firm K, except that Taxpayer B chose not to have federal income taxes withheld because he believed that the actions described herein would constitute a rollover, and that no federal income taxes would be due.

It has been represented that no one associated with Investment Firm K explained to Taxpayer B at the time the above transaction was being consummated that there was a difference between a distribution to Trust I and a rollover described in Code section 408(d). Furthermore, it has been asserted that no one at Investment Firm K advised Taxpayer B that the form that was sent to him was not the proper form to accomplish a rollover. It has been represented that Investment Firm K does have a one page sheet entitled "Instructions for IRA Distributions" that should have accompanied the "Distribution Form" that was sent to Taxpayer B. However, Taxpayer B did not receive

this sheet until February 2004 which was after the 60-day rollover period applicable to the distribution of Amount J from IRA H had expired.

Taxpayer B first became aware that the distribution from IRA H was not rolled over into another IRA when he received a Form 1099-R from Investment Firm K in either late January or early February 2004. Taxpayer B immediately requested that the funds distributed from IRA H be placed in an inherited individual retirement account in the name of Taxpayer A at Investment Firm K in order to qualify the transaction described herein as a rollover contribution. Investment Firm K refused and continues to refuse to make this transfer since the applicable 60-day rollover period had expired.

Investment Firm K is holding all funds transferred out of IRA H and all earnings on those funds in Account L and no distributions have been made from that account.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount J from IRA H, because the failure to waive such requirement would be against equity or good conscience.

With respect to your ruling request, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA should 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) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code 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) of

the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(C) of the Code denies rollover treatment for inherited IRAs. An IRA shall be treated as inherited if the individual for whose benefit the arrangement is maintained acquired such IRA by reason of the death of another individual, and such individual was not the surviving spouse of such other individual.

Section 408(d)(3)(D) of the Code provides a 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.

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)(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.

With respect to the ruling requested, Code section 408(d)(3)(I) and Rev. Proc. 2003-16 authorize the Service to extend the 60-day rollover period under certain circumstances. However, the Service may only grant an extension of time to accomplish a rollover where the distribution concerning which the extension is requested was eligible for rollover treatment. In this case, neither Trust F nor Taxpayer A's three children, the three beneficiaries of Trust F, was eligible to roll over Amount J, the amount distributed from IRA H and eventually placed in Account L, into another IRA.

In short, the information presented by Taxpayer B demonstrates that IRA H became an inherited IRA (as defined in section 408(d)(3)(C)(ii)) with respect to Trust F and Taxpayer A's three children upon Taxpayer A's death. Section 408(d)(3)(C)(i) of the Code denies rollover treatment for inherited IRAs.

Since Amount J was ineligible to be rolled over into an IRA, the 60-day rollover period never attached to Amount J. Thus, the Service cannot grant an extension of time to complete an action, which neither Trust F nor the three beneficiaries thereof could have accomplished within the 60-day period applicable to rollovers.

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Thus, with respect to your ruling request, we conclude as follows:

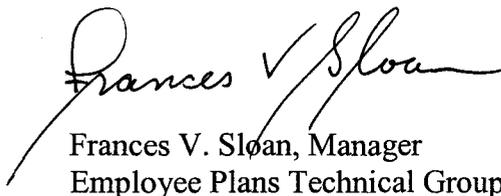
Since Trust F and the beneficiaries thereunder were ineligible to roll over Amount J, distributed from IRA H, into an individual retirement account, the Service cannot grant any period of time to accomplish said rollover of Amount J.

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 \*\*\*, \*\*\*, at \*\*\*. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures: Deleted copy of this letter  
Notice of Intention to Disclose, Notice 437

cc: \*\*\*  
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