



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200431021

MAY - 7 2004

Uniform Issue List: 408.03-00

SET. EP. RA. T3

Legend:

Taxpayer A =

Taxpayer B =

Amount D =

Company C =

Company W =

Plan X =

Dear

In letters dated March 14, 2004, as supplemented by correspondence dated April 1, 2004, you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) 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:

At the end of Taxpayer A retired from his job at Company C. All of his retirement paperwork was completed in including an ESOP account election form on which Taxpayer A had to elect to choose either cash or stock from the Company C ESOP, Plan X, and had to elect either to receive a direct distribution or to have amounts due him under Plan X "transferred in a direct rollover to.. or IRA specified below". Taxpayers A and B elected to receive cash and to have said cash totaling Amount D

transferred as a direct rollover to an IRA set up and maintained with Company W. The retirement benefits representative at Company C advised Taxpayer A that the distribution of Amount D would go directly to Company W.

However, instead of transferring Amount D directly to Company W, the trustee for a new IRA, Company C's Plan X services corporation mailed certain distribution statements to Taxpayer A. These statements reported the distribution of Amount D from Plan X as a check which was transferred to Company W and included a copy of a check bearing the following words: "Non-Negotiable" and "Check No.XXXX Was Transferred To Trustee (Company W)".

However, attached as a last page of these statements was a contiguous piece of paper the top portion of which provided information about the distribution from Plan X and the bottom portion was the actual distribution check from Plan X. The check, in part, provided that it was payable to Company W F/B/O Taxpayer A.

Upon receipt of these statements Taxpayer A assumed the direct rollover had been completed as elected and filed the above described statements with his federal income tax papers for future reference. Taxpayer A never realized that the bottom portion of the last statement page was in fact the original distribution check of Amount D.

Taxpayers A and B while in the process of preparing their year 2003 federal income tax returns discovered the error made by Company C and its agents. Taxpayers A and B immediately took steps to correct the mistake and contacted the Internal Revenue Service for assistance.

The Form 1099-R associated with Taxpayer A's distribution from Plan X indicates that no portion of Amount D was taxable to Taxpayer D when distributed.

Based on the facts and representations, you request that the 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.

With respect to your request to waive to 60 day rollover requirement, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs.

Section 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401(a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections 401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) 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 402(c)(3)(B) 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 402(c)(3)(B), 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 provided by Taxpayers A and B demonstrates a failure on the part of

Company C to timely accomplish a direct trustee-to-trustee rollover of Amount D as directed by Taxpayer A upon his retirement from Company C which caused the failure of Taxpayer A to satisfy the Code section 402(c) rollover requirements. Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, or any portion thereof, to an IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions within the meaning of section 402(c) of the Code.

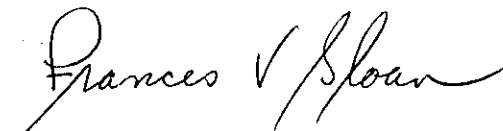
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter 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

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 letter ruling

Notice of Intention to Disclose