

200637035



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

JUN 21 2006

Uniform Issue List: 402.00-00

T: E P: R A: T 3

Legend:

Taxpayer A

Taxpayer B:

Amount A:

Amount B:

Amount C

IRA 1

Plan X:

Institution X:

Dear

This is in response to your request dated \_\_\_\_\_, as supplemented by  
correspondence dated \_\_\_\_\_, in which you request a waiver  
of the 60-day rollover requirement contained in section 402(c)(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.

Taxpayer A and Taxpayer B are married and file a joint Federal tax return. Taxpayer A  
represents that he received a distribution from Plan X totaling Amount A. Amount B was  
withheld from his Plan X distribution as Federal income tax. Amount A was timely rolled into  
IRA 1. Taxpayer A and Taxpayer B filed their joint Federal income tax return and sought a  
refund that Taxpayer A could also roll over into IRA 1. The refund was received approximately  
one week beyond the 60 day rollover period applicable to Taxpayer A's distribution from Plan X.  
The tax refund of Amount C was contributed into IRA 1 upon receipt. However, the contribution  
occurred outside of the applicable 60-day rollover period. Amount C is less than Amount B.

Taxpayer A asserts that his failure to accomplish a rollover of the full amount standing to his credit under Plan X within the 60-day period prescribed by section 402(c)(3) was due to incorrect financial advice from personnel administrators of Institution X. In this regard, Taxpayer A asserts that he was told that he could not accomplish a direct trustee to trustee transfer of his Plan X account balance into an individual retirement account ("IRA") because he did not already have a qualified IRA to receive the transfer.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount B contained in section 402(c)(3) of the Code in this instance.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) 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.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

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 402(c)(3) 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 presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the misleading advice offered by personnel of Institution X which prevented him from either making a timely rollover or accomplishing a direct trustee to trustee transfer of his entire Plan X account balance, including Amount B, or any portion thereof, into an IRA.

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 C from Plan X. As a result Taxpayer A's contribution of Amount C into an IRA is deemed to be a timely rollover of

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said Amount C provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, were met with respect to such contribution.

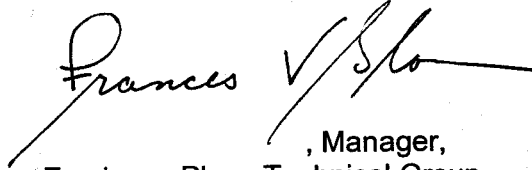
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

A copy of this letter ruling is being sent to your authorized representative pursuant to a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact \_\_\_\_\_ at \_\_\_\_\_  
Please address all correspondence to \_\_\_\_\_

Sincerely yours,

  
\_\_\_\_\_, Manager,  
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose