

200910069

Department of the Treasury  
Internal Revenue Service

DEC - 9 2008

T:EP:RA:T3

*Uniform Issue List: 402.00-00*

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Legend:

Taxpayer A = \*\*\*  
Taxpayer B = \*\*\*  
Plan C = \*\*\*  
Amount D = \*\*\*  
State E = \*\*\*  
Court F = \*\*\*  
Date 1 = \*\*\*  
Date 2 = \*\*\*

Dear \*\*\*:

This is in response to a request, submitted on behalf of the estate of Taxpayer A, by an authorized representative, dated October 16, 2007, as supplemented by correspondence dated December 18, 2007, July 14, 2008 and August 1, 2008, in which the estate requests 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:

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Taxpayer A was a participant in Plan C, a profit sharing plan, which was intended to be qualified under section 401 (a) of the Code. Taxpayer A received a distribution, Amount D, from Plan C on Date 1. Taxpayer A died on Date 2, without having attained age 70 ½. Amount D represents Taxpayer A's full interest in Plan C.

Taxpayer B is the executrix of Taxpayer A's estate. Taxpayer A, through Taxpayer B, asserts that the failure to accomplish a rollover of Amount D within the 60-day period prescribed by section 402 (c) (3) of the Code was due to Taxpayer A's medical condition, treatments for such condition and subsequent death. Taxpayer B further represents that Amount D has not been used for any other purpose.

Taxpayer B has submitted Letters Testamentary issued by Court F that reflect Taxpayer B's standing as Executrix of Taxpayer A's estate. Court F is located in State E and is asserted to be a court of competent jurisdiction in this matter.

Documentation has been submitted that reveals Taxpayer A intended to roll over Amount D within 60 days of Date 1, the date of distribution. As stated above, Taxpayer A was unable to complete the rollover due to intervening medical circumstances.

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

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. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402 (c) (3) (A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property.

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

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) 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 on behalf of Taxpayer A is consistent with the assertion that the failure to accomplish a timely rollover was caused by Taxpayer A's medical condition, treatments for such condition and subsequent death.

Therefore, subject to the restrictions noted below, 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 from Plan C. The estate of Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover IRA. Provided all other requirements of section 402 (c) (3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 402 (c) (3) of the Code.

Taxpayer B will establish an IRA in the name of Taxpayer A. The Service notes that the IRA into which Amount D is rolled over will not have a designated beneficiary as that term is defined in section 401 (a) (9) of the Code and distributions from the new IRA will be subject to the rules set forth in section 401 (a) (9) (B).

This ruling assumes that Taxpayer B's action in this instance are taken pursuant to her represented authority as Executrix of Taxpayer A's estate and that the Rollover IRA set up in Taxpayer A's name will be in accordance with the laws of State E.

This letter assumes that Plan C was qualified under section 401 (a) of the Code at the time of distribution of Amount D.

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.

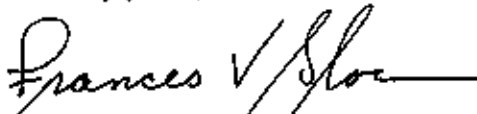
This letter is directed only to the taxpayer who requested it. Section 6110 (k) (3) of the Code provides that it may not be used or cited as precedent.

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Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the authorized representative. If you wish to inquire about this ruling, please contact \*\*\*, I.D. # \*\*\*, 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 ruling letter  
Notice of Intention to Disclose  
Copy to Power of Attorney