



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

200451038

SEP 24 2004

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

*Uniform Issue List: 402.00-00*

SE.T.EP.PA.T3

**Legend:**

Company A =

Company B =

Trustee C =

Amount D =

Amount E =

Amount F =

Plan X =

IRA Y =

Dear

This is in response to a request dated May 13, 2004, submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code"). Correspondence dated June 28, 2004, and August 26, 2004 supplemented the request.

You and your representative have submitted the following facts and representations:

Company A sponsored Plan X in which you participated. You terminated employment with Company A on or about [REDACTED]. In November, [REDACTED] you received a check in the amount of Amount D from Trustee C (Trustee C was the trustee for Company A's Plan X). At the time that you received the check you did not know why you had received the check. You did not receive notification that the check was to be mailed to you, and no notice as to what the

check represented was enclosed. You were unaware and were not advised that it was a distribution of all amounts due you from Plan X, or that you had 60 days to roll over the funds into an individual retirement account. Amount D represented the total distribution due you from Plan X less federal and state withholding. You have not attained age 70 ½.

A few weeks after receiving the above-referenced check, you attempted to schedule an appointment with your financial advisor. However, you were unable to secure an appointment until January 26, [REDACTED]. At that time your financial advisor advised you that the check might be a qualified plan distribution check. During this time period, you misplaced the check and exhausted all efforts to find it. On January 27, [REDACTED], you contacted Trustee C and talked to several people who had no idea why the check was issued. You finally were able to contact an employee of Trustee C who knew what the check represented. You notified Trustee C of the misplaced check and requested a replacement check. On February 10, [REDACTED], Trustee C issued a replacement check in the amount of Amount D to you. On February 23, [REDACTED], you mailed the replacement check together with your personal check in the amount of Amount E (which represents the amount of the federal and state withholding) to Company B for deposit in IRA Y. The total amount sent for deposit in IRA Y was Amount F, which equals the gross lump sum distribution due you from Plan X.

The 60-day rollover period expired on or about January 23, [REDACTED].

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount F (which includes federal and state tax withholding), because the failure to waive such requirement would be against equity or good conscience.

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 includable 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 408(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 by you demonstrates a mistake on the part of Trustee C by not providing you with any information either as to the source or purpose of the check you received in November, [REDACTED] or of the 60-day rollover requirement. Furthermore, the check was received without your having received any notice that it was to be forthcoming, and over five (5) years after you separated from the service of Company A. In addition, you have demonstrated that had you been aware of the reason for the check and of the rollover requirements, you would have attempted to complete the rollover of the check into an IRA within the 60-day rollover period. This is shown by the fact that the replacement check was sent directly to IRA Y without being cashed. Also, the funds distributed from Plan X were placed in an IRA approximately 31 days after the time had expired for completing the rollover, and none of the funds were used for any personal expenses during this time.

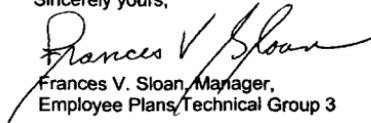
Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of the amount from Plan X. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions. The contribution of Amount F into IRA Y will be considered a rollover contribution 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 XXX XXXXXXX (ID XX-XXXX) at (XXX) XXX-XXXX. 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

CC: