

200424008



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 17 2004

Uniform Issue List: 408.03-00

[REDACTED]

Legend:

Taxpayer A = [REDACTED]

Amount A = [REDACTED]

Bank B = [REDACTED]

Company C = [REDACTED]

Company D = [REDACTED]

Plan X = [REDACTED]

Dear [REDACTED]

In letters dated December 15, 2003, and February 5, 2004, your authorized representative requested, on your behalf, 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:

Taxpayer A was a participant in Plan X, a plan qualified within the meaning of section 401(a) of the Internal Revenue Code which contains a Code section 401(k) arrangement. On or about August 5, [REDACTED], Taxpayer A received and signed paperwork from Bank B, the administrator of Plan X, on which she indicated that she wished to receive a distribution of her Plan X account and on which she indicated that she wanted 100% of her account transferred, by means of a direct rollover, to Company C. On or about August 11, [REDACTED], Bank B received Taxpayer A's August 5, [REDACTED], paperwork. On or about August 12, [REDACTED],

Bank B advised Taxpayer A that her paperwork was outdated and that she would have to resubmit correct paperwork. On or about September 10, Bank B received paperwork from Taxpayer A, dated September 9, in which Taxpayer A requested a distribution of her Plan X account but which did not request that said distribution be directly transferred or directly rolled over into a section 403(b) contract held with Company C. Bank B issued a check dated September 12, to Taxpayer A in the amount of her Plan X account balance less % withholding for Federal income taxes.

Documentation submitted with your ruling request includes a Form dated August 19, signed by Taxpayer A and co-signed by a representative of Company C, on which Taxpayer A requests that the Plan X distribution to be received by her from Bank B be directly rolled over into an annuity contract issued by Company C.

On or about September 18, struck Taxpayer A's area of residence. Taxpayer A is an employee of a company and before the storm, and for some time after the storm, worked in emergency cooperation with local authorities and rescue squads preventing or other obvious dangers.

Generally, Taxpayer A reviews and sorts her mail daily. However, during the week of September 14, (the week struck Taxpayer A's area), she did not check her mail but rather bundled all important documents and ordinary mail in random order in upstairs rooms of her home for protection against rising water levels. As a result, Taxpayer A did not notice a Bank B envelope or realize that she had received a check from Bank B. Subsequent to the passing of , utilities were destroyed and Taxpayer A began a struggle to limit further damage to her properties and to participate in rescue squad assistance.

On November 19, Taxpayer A discovered the Bank B check in Amount A and for the first time discovered a letter informing Taxpayer A that her attempted rollover transaction failed because the form which Taxpayer A had completed on or about September 9, did not indicate that Taxpayer A wanted her Plan X distribution rolled over into a Code section 403(b) contract with Company C. After many discussions with Bank B, Taxpayer A then placed Amount A in an IRA account with Company D on December 12,

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount A 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 submitted with respect to this ruling request indicates that Taxpayer A attempted to roll over, by means of a direct trustee to trustee transfer, her Plan X account balance into a Code section 403(b) contract. However, because of a series of events including, but not limited to (1) Taxpayer A's initially completing an obsolete form; (2) Taxpayer A's completing the correct form but in an inappropriate manner; (3) Hurricane Isabel's striking Taxpayer A's area of residence; (4) Taxpayer A's being involved with Hurricane Isabel cleanup activities; and (5) Taxpayer A's inadvertently stacking mail bearing on her Plan X distribution from Bank B with other, less important mail, Taxpayer A did not accomplish said direct rollover. Instead she received a check in the amount of Amount A which she did not timely roll over into a Code section 403(b) arrangement.

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 A from Taxpayer A's Plan X. Thus, Taxpayer A's contributing her Plan X distribution, Amount A, into an IRA with Company D on or about December 12, , is deemed to have been a timely rollover which satisfied the requirement of Code section 402(c)(3)(A). Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, were met with respect to such contribution, said contribution of Amount A into said Company D IRA 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 , I.D.
at () . Please address all correspondence to SE:T:EP:RA:T3.

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A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose