

200703046



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIC: 402.00-00

OCT 27 2006

Legend:

Taxpayer A =

Taxpayer B =

Company W =

Company X =

Company Y =

Plan X =

Month 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Amount 1 =

Amount 2 =

Total 1 =

Dear :

This is in response to the letter received by the Internal Revenue Service ("Service") on or about _____, as supplemented by correspondence dated _____ in which your authorized representative on your behalf requests 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, died on Date 1, 2002. Prior to his death Taxpayer A had been employed by Company W, and was a participant in Plan X sponsored by Company W. As a result of Taxpayer A's death, his surviving spouse, Taxpayer B, became entitled to receive Taxpayer A's Plan X account balance.

Taxpayer A's Plan X account balance consisted of both liquid assets payable in cash and shares of stock. On or about Date 2, 2003, Taxpayer B established an individual retirement account ("IRA") with Company X so that she could roll over amounts due her from Taxpayer A's Plan X account thereto. At approximately the same time, Taxpayer B completed paperwork necessary to accomplish the transfer of amounts from Plan X to her IRA. On or about Date 4, 2003, Company X received the liquid asset portion of the amounts due Taxpayer B from Plan X. Said liquid assets totaled Amount 1. At approximately the same time, Taxpayer B received stock certificates from Company Y, the custodian of Plan X. Said certificates were dated Date 3, 2003. The certificates represented Total 1 shares of stock and were titled "Company X FBO Taxpayer B". Taxpayer B did not contribute these shares of stock into her Company X IRA. During Month 1, 2005, Taxpayer B placed the certificates in a brokerage account with Company X.

It has been represented that during calendar year Taxpayer B received a calendar year Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing a Plan X distribution to her with respect to calendar year in the amount of Amount 2. Box 7 (Distribution Code(s)) of said Form 1099-R was coded "G" indicating a "Direct Rollover" to a qualified plan.

This request for letter ruling was filed with the Internal Revenue Service shortly after the occurrence of the last of the above-referenced actions.

Based on the facts and representations, you request:

That the Service waive the 60-day rollover requirement with respect to the distribution of Total 1 shares of stock that Taxpayer B received during calendar year from Plan X because the failure to waive such requirement would be a hardship and against equity or good conscience.

With respect to your ruling requests, 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.

Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) (which excludes rolled over amounts from gross income) 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)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Code section 402(c)(6)(A) provides that the transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

Code section 402(c)(6)(B) provides that the excess of the fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

Code section 402(c)(6)(D) provides that no gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

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.

Section 402(c)(9) of the Code provides, that if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

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-3, provides, in relevant part, that a direct rollover that satisfies section 401(a)(31) is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of a distributee.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-4, provides, in summary, that providing a distributee with a check and instructing the distributee to deliver the check to the eligible retirement plan is a reasonable means of direct payment as long as there is compliance with the requirements contained therein.

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).

The Preamble to the "Final" Income Tax Regulations under Code section 401(a)(31) provides, in relevant part, that "...the direct rollover option is provided in addition to the pre-existing rollover provisions under section 402. Thus, an employee who receives an eligible rollover distribution but does not elect a direct rollover still has the option to subsequently roll over the distribution to an eligible retirement plan within 60 days of receipt".

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.

In this case the Service notes that Taxpayer B received a Plan X distribution in the form of a "direct rollover", as that term is defined in Code section 401(a)(31), of amounts due her from said Plan X as a result of the death of her husband, Taxpayer A. The cash portion of the Plan X distribution was paid directly to her Company X IRA, and the stock portion was mailed to her but the stock certificates indicate they were payable to Company X for the benefit of Taxpayer B. Thus, in short, neither the cash nor the stock was payable to Taxpayer B, and Taxpayer B lacked control over the stock certificates and could not have disposed of the shares of stock. The

Form 1099-R received by Taxpayer B supports this conclusion by showing "Code G" in block 7.

In short, Taxpayer B never received a distribution subject to the 60-day rollover requirement found in Code section Code section 402(c)(3)(A).

Thus, the Service concludes as follows with respect to your ruling request:

That Taxpayer B's receipt of the Total 1 shares of stock referenced above was in the form of a "direct rollover" as that term is used in Code section 401(a)(31) and the Income Tax Regulations promulgated thereunder. As a result, it was not subject to the 60-day rollover requirement of Code section 402(c)(3)(A). Furthermore, consistent with the language on the stock certificates which indicates they were payable to Company X, Taxpayer B may place the stock certificates referenced herein in her IRA maintained with Company X.

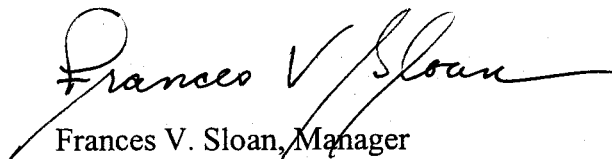
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to your 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 letter ruling
Notice of Intention to Disclose