

200715013



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 16 2007

Uniform Issue List: 403.00-00

T:EP:RA:T3

Legend:

Taxpayer A =
TSA B =
Amount D =
Amount E =
Financial Advisor C =
Account T =
Insurance Company H =
Date 1 =
Date 2 =

Dear

This is in response to a letter dated April 7, 2006, in which your authorized representative requests a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the Code), as applicable to an annuity described in Code section 403(b) pursuant to Code section 403(b)(8)(B).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age whose date of birth was Date 2, represents that a distribution from TSA B, a tax sheltered annuity retirement account described in Code section 403(b), totaling Amount E was intended to be directly rolled over into an IRA. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3)(A), applicable in her situation pursuant to Code section 403(b)(8)(B), was due to error on the part of Financial Advisor C.

On Date 1, 2005, following the directions and advice of Financial Advisor C, Taxpayer A opened Account T at Insurance Company H. Taxpayer A stated that she intended to open a rollover individual retirement account (IRA). Financial Advisor C completed application forms which Taxpayer A signed in order to accomplish her intended transfer into an IRA annuity. However, Financial Advisor C incorrectly completed the application form Item 9A requesting that TSA B be transferred, by means of a Code section 1035 like-kind exchange, to a non-qualified annuity instead of Item 9B which specifically

referenced qualified annuities to include IRA annuities. Relying upon the expertise of Financial Advisor C, Taxpayer A signed the application forms believing that she had accomplished her intended rollover. As a result of Financial Advisor C's error, federal and state income taxes were withheld from Taxpayer A's distribution from TSA B resulting in a net contribution of Amount D into Account T, a non-IRA account. It was not until the next year that Taxpayer A learned from Financial Advisor C that Account T was set up as a non-IRA account in error and not as an IRA as Taxpayer A intended and requested. Documentation in the file includes a statement from Financial Advisor C acknowledging his error in completing the forms.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount E 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 403(b)(1)(E) of the Code ("flush" language) provides, in relevant part, that any amount distributed out of an annuity contract described in section 403(b)(1) 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).

Code section 403(b)(8)(A) provides that if any portion of the balance to the credit of an employee in a 403(b) annuity contract is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), and the employee transfers any portion of the distribution to an eligible retirement plan described in section 402(c)(8)(B), then the distribution to the extent transferred shall not be includible in gross income for the taxable year in which it was distributed.

Section 403(b)(8)(B) provides that rules similar to the rules of paragraphs (2) through (7) and (9) of section 402(c) shall apply for purposes of section 403(b)(8)(A).

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) 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.

Section 402(c)(4) of the Code defines "eligible rollover distribution". Excepted from the definition of "eligible rollover distribution" is any distribution required under Code section 401(a)(9).

Section 402(c)(8) defines an eligible retirement plan for purposes of subsection (c) as including an IRA described under section 408(a).

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 presented and documentation submitted on behalf of Taxpayer A is consistent with her assertion that the failure to accomplish a timely rollover was caused by an error on the part of Financial Advisor C in his failing to properly complete the rollover application forms.

Thus, based on the above, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover period found in Code section 402(c)(3)(A) (applicable to annuities described in Code section 403(b)). As a result Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E into a Rollover IRA (except as noted below). Provided all other requirements of section 403(b)(8) of the Code (which incorporates the requirements of Code section 402(c)), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount E into an IRA (except as noted below) will be considered a rollover contribution within the meaning of section 403(b)(8) 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.

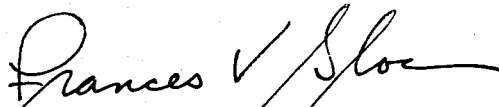
We note that Taxpayer A will attain age 70 $\frac{1}{2}$ during calendar year 2006. Thus, this ruling letter does not authorize the rollover of the amount, which constitutes a required distribution for calendar year 2006.

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

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
Please address all correspondence to

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name and title.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose