



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200724039

MAR 23 2007

Uniform Issue List: 402.00-00

T:EP:RA:T2

Legend:

Company A =

Company B =

Company C =

Amount M =

Amount N =

Date E =

Date F =

Date G =

Plan X =

Dear

This is in response to your request dated July 20, 2006, submitted by your authorized representatives, in which you request a waiver of the 60-day rollover period contained in section 402(c)(3) of the Internal Revenue Code (the "Code"). Correspondence dated October 20, December 20, January 26, January 15, January 31, February 7, and February 13, supplemented the request.

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

You, age 58, represent that as a result of your termination of employment with Company B, you received a distribution of your account balance, including a plan loan offset for an unpaid loan of Amount M from Plan X. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was a result of lack of advice and miscommunication with respect to the treatment of Amount M from Plan X as an eligible rollover distribution.

You were an employee of Company A, a subsidiary of Company B. Plan statements of your account indicate that during the first quarter of you took out a loan totaling Amount M from Plan X, a defined contribution plan described in section 401(a) of the Code. Subsequently, on Date E, 2005, you terminated your employment with Company A. Although you were not able to furnish to us copies of Company A's correspondence to you, you represent that you were afforded an opportunity to repay the loan in order to avoid Amount M being treated as a loan offset. You attempted to repay Amount M by sending a check for Amount M to Plan X. It is represented that, according to Company A, you did not repay the loan by the date required and Company A returned Amount M to you. Accordingly, Amount M was treated as a plan loan offset when you received a distribution of your total account balance. On Date F, 2005, you deposited Amount M in a non-IRA Certificate of Deposit with Company C. You received two Form 1099s: one for Amount M, representing the loan offset amount and another for Amount N, representing the balance of the funds in Plan X. On Date G, 2006, you timely rolled over Amount N into an IRA, but did not rollover Amount M.

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

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. 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 402(c)(3)(B) of the Code.

Page 3

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.

Section 1.402(c)(2), Q&A 9 of the regulations, provides, in relevant part, that a distribution of a plan loan offset amount is an eligible rollover distribution which may be rolled over to an eligible retirement plan within the 60-day period under section 401(c)(3) of the Code.

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.

Amount M, as a plan loan offset, was eligible to be rolled over within 60 days of the distribution of your account balance from Plan X. You have not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected your ability to timely roll over Amount M, or any portion thereof, to an IRA. No documentation was submitted that you intended to rollover Amount M. You assert that you were unaware of the rollover option for this offset, and were not advised of your ability to do so. However, you did timely roll over Amount N to an IRA. Thus, you were aware of the 60-day rollover period, and the ability to seek advice as to the eligibility of Amount M for rollover was at all times within your control.

Therefore, pursuant to section 408(d)(3)(i) of the Code, the Service declines to waive the 60-day rollover requirement.

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.

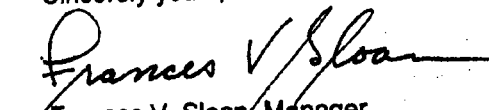
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling has been sent to your authorized representatives in accordance with a power of attorney on file with this office.

Page 4

If you wish to inquire about this ruling, please contact (ID) at
Please address all correspondence to SE:T:EP:RA:T:3.

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: