



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

APR - 3 2007

Uniform Issue List: 402.00-00

Legend:

Taxpayer A =  
Amount D =  
Amount E =  
Amount F =  
Amount G =  
IRA Y =  
Bank B =  
Company P =  
Plan X =  
Credit Union O =  
Account Z =

Dear :

In letters dated April 18, 2006, as supplemented by correspondence dated August 7, 2006, and March 20, 2007, submitted on your behalf by your authorized representative, you requested 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, age 66, represents that he received a distribution from Plan X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a misunderstanding with a representative of Credit Union O about his intent to establish an IRA. Taxpayer A represents that Amount F has not been used for any other purpose.

On April 13, 2005, Taxpayer A was entitled to receive a distribution from Plan X of his total account balance, Amount D, as a result of his retirement from Company P. Of this

amount, Amount E was received in the form of a check payable to Bank B for the benefit of Taxpayer A and was directly rolled over into IRA Y on April 19, 2005. Taxpayer A asserts that he did not make a direct rollover of Amount D into IRA Y because he was concerned about FDIC insurance limits and wanted to establish an IRA with the remaining funds at another financial institution. Accordingly, after federal income tax withholding of Amount G, the remainder of Taxpayer A's account balance, Amount F, was issued by check payable to Taxpayer A on April 13, 2005. Taxpayer A hand delivered the Amount F check to a representative of Credit Union O on April 19, 2005. At the time of deposit Taxpayer A intended to rollover Amount F but because of a misunderstanding Amount F was deposited into Account Z, a non-IRA account. Taxpayer A's CPA discovered this error at the time he was preparing Taxpayer A's federal income tax return. Amount F remains deposited in Account Z at Credit Union O and has not been used for any other purpose.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to Amounts F and G 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. 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 provided by Taxpayer A demonstrates that Taxpayer A received a distribution from Plan X of Amount F and that the failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a misunderstanding with a representative of Credit Union O which resulted in Amount F being placed into a non-IRA account.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount F into an IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions within the meaning of section 402(c) of the Code.

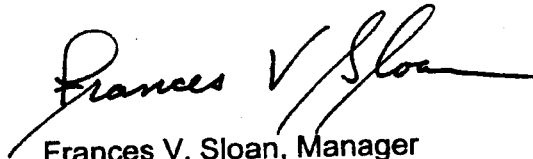
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 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