



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 403.00-00

FEB - 1 2008

T:EP:RA:T3

Legend:

Taxpayer A =
Taxpayer B =
Tax Deferred Annuity B =
Qualified Plan C =
Amount D =
Amount E =
Entity F =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =

Dear

This is in response to a letter dated December 13, 2006, and supplemented by letters dated May 8, 2007 and July 5, 2007, 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 a retirement plan qualified within the meaning of section 401(a) of the Internal Revenue Code ("Code"), and contained in Code section 403(b)(8)(B), as applicable to an annuity described in Code section 403(b).

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

Taxpayer A, age , represents that a distribution from Tax Deferred Annuity B, a tax deferred annuity retirement account described in Code section 403(b), as well as a distribution from Qualified Plan C representing Amount D and Amount E, respectively, were intended to be directly rolled over into an Individual Retirement Account (IRA) described in Code section 408(a). Taxpayer A asserts that his failure to accomplish rollovers within the 60-day period prescribed by section 402(c)(3)(A), and applicable in his situation pursuant to Code section 403(b)(8)(B), was due to a mistaken belief that the full amount of Federal taxes had already been withheld.

Taxpayer A and Taxpayer B were married. On Date 1, 2005, Taxpayer B died and was survived by Taxpayer A. Taxpayer B was years of age at the time of her death. At the time of her death, Taxpayer B was a participant in Qualified Plan C and the owner of Tax Qualified Annuity B. Entity F sponsors both Tax Deferred Annuity B and Qualified Plan C.

On Date 2, 2005, Taxpayer A requested the distribution of all amounts due him from Taxpayer B's account under Tax Deferred Annuity B and all amounts due him from Taxpayer B's account under Qualified Plan C. On Date 3, 2005, after processing Taxpayer A's request, Entity F confirmed the impending distribution of amounts due Taxpayer A, and indicated that Federal Income taxes had been withheld prior to the distribution of Amount D and Amount E to Taxpayer A. On or about Date 4, 2005, Entity F sent separate checks for Amount D and Amount E to Taxpayer A.

On Date 5, 2006, Taxpayer A deposited both checks in a non-tax qualified account (non-IRA) that he had previously established in the name of the estate of Taxpayer B. Taxpayer A did not deposit Amount D or Amount E in a tax-qualified account (i.e. an IRA) within 60 days of receipt of either distribution.

In his correspondence dated July 5, 2007, Taxpayer A asserts that the sole reason he did not roll over either Amount D or Amount E into an IRA was because he believed the Federal tax withheld by Entity F was the "...entire amount of tax due".

Based on the above facts and representations, you, through your authorized representative, request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D and Amount E because the failure to waive such requirement would be a hardship and against equity or good conscience.

With respect to your ruling request, section 402(a) of the Code provides, generally, that, except as otherwise provided in section 402, any amount actually distributed from a trust described in section 401(a) which is exempt from tax under section 501(a) of the Code shall be taxable to the distributee, in the taxable year of the distribute in which distributed, under section 72 of the Code.

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs.

Section 402(c)(1) of the Code provides, in general, that if any portion of an eligible rollover distribution from a qualified trust is transferred to an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(3)(A) of the Code 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) of the Code defines an "eligible retirement plan" as (i) an individual retirement account described in section 408(a) of the Code, (ii) an individual retirement annuity described in section 408(b) of the Code (other than an endowment contract), (iii) a qualified trust, (iv) an annuity plan described in section 403(a) of the Code, (v) an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b) of the Code.

Section 402(c)(9) of the Code provides that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee.

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).

Section 403(b)(8)(A) of the Code 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) of the Code 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).

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 indicates that he had no intent to roll over either Amount D or Amount E at the time he received either distribution. At that time, he mistakenly believed that sufficient taxes had already been withheld from the distributions, no further taxes were due, and that there were no further Federal tax consequences. He chose to accept said tax consequences. When he subsequently discovered there were additional tax consequences, he reconsidered his decision and decided that he should have rolled over Amounts D and E into an IRA. Neither Code section 402(c)(3)(B), Code section 403(b)(8)(B), nor Rev. Proc. 2003-16 authorize the Service to extend the 60-day rollover period under such circumstances.

Therefore, pursuant to sections 402(c)(3)(B) and 403(b)(8)(B) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D and Amount E from Tax Deferred Annuity B and Qualified Plan C, respectively.

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.

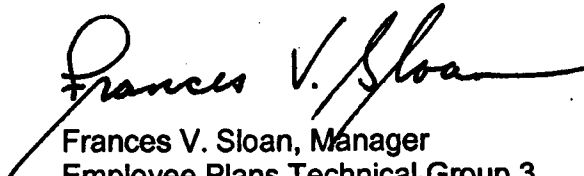
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact _____, at _____.
Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

CC:

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