

Department of Treasury
Internal revenue Service

200850056

Uniform Issue List: 402.00-00

SEP 18 2008

SE.T.E.P. R.A.T.Y

Legend:

Individual A =

Individual B =

Company M =

Plan X =

Company N =

Individual C =

Amount 1 =

Amount 2 =

Company O =

Dear '

This is in response to your request received in our office on July 2, 2008, as supplemented by correspondence dated August 15, 2008, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) 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:

Individual A was married to Individual B. Individual B died on August 13, 2000. Individual B had been employed by Company M and participated in Company M's retirement plan, Plan X. Individual A's date of birth was

On December 29, 2006, the custodian of Plan X issued a check to Individual A for Amount 1. The purpose of this check was to liquidate Individual B's account balance in Plan X, which Individual A had inherited. No advance notice was given to Individual A regarding this check and there had been no prior distributions to Individual A from Plan X. Individual A was not aware that Individual B had participated in Plan X. The Plan X

administrator did not explain why the distribution was made more than six years after Individual B's death. An explanation accompanied the check which stated that Amount 2 was taxable and was eligible to be rolled over.

Individual A was very concerned about the taxability of Amount 2. On January 3, 2007, she met with Individual C, who is a financial planner and the owner of Company N, a financial planning company. Individual A told Individual C that she did not want to pay income tax on the taxable distribution and that she wanted him to invest Amount 2 for her retirement. Individual A showed Individual C the Distribution Statement which was attached to the check. The Distribution Statement indicated that the source of the funds was Plan X and that Amount 2 was the taxable amount eligible to be rolled over. In addition, the check indicated that the source of the funds was from Plan X.

Individual C had Individual A endorse the check payable to Company O, an investment company. Individual C also had Individual A sign some forms which Individual A thought were forms to establish a rollover Individual Retirement Arrangement (IRA).

Individual A received Form 1099-R concerning the Plan X distribution. However, she did not open any mail that indicated it contained income tax information. Instead, Individual A collected all such correspondence and brought it to her CPA for income tax preparation. When her CPA questioned her about the Form 1099-R, she told him that she had endorsed the check over to Company O to open an IRA.

Individual A has no understanding of investments and relied heavily on Individual C, a close personal friend of Individual B, to guide her financially since Individual B's death.

Individual A received Notice CP2000 from the Internal Revenue Service, dated May 27, 2008. This Notice stated that Individual A was liable for additional income taxes because Amount 2 was not included as income on her 2006 Federal income tax return. It was at this point that Individual A realized that Amount 2 had not been rolled over into an IRA, which was her intent.

Based on the facts and representations, you request a ruling that the Service waive the 60-day rollover requirement, with respect to the distribution of Amount 2, 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 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 section 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.

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) 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.

The information presented and documentation submitted by Individual A are consistent with her assertion that her failure to accomplish a timely rollover was caused by the actions of her financial planner, Individual C. Although Individual A gave Individual C the check for Amount 2, which indicated the source of the funds was Plan X and attached to which was the Distribution Statement indicating there was a taxable distribution from Plan X which could be rolled over, Individual C did not follow Individual A's intent to preserve Amount 2 from current taxation and invest it for her retirement. Individual A signed forms which she thought established a rollover IRA. Instead, Individual C used the funds to establish a non-IRA arrangement with Company O.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from Plan X. Individual A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 2 into a rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2 will be considered a rollover contribution within the meaning of section 402(c)(3) 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.

This letter expresses no opinion as to whether Plan X satisfied the requirements of section 401 of the Code.

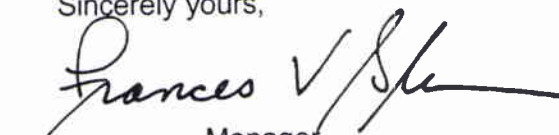
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact _____, I.D. # _____, at _____. Please address all correspondence to _____.

Sincerely yours,


_____, Manager
Employee Plans Technical Group

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose