



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200905035

NOV -7 2008

Uniform Issue List: 408.03-00

Legend:

SE:T:EP:RA:3

Taxpayer A =

Amount E =

Amount F =

Company C =

Company C Assistant
Human Resources Director =

Bank A =

Date 1=

Date 2 =

Date 3 =

Date 4=

Plan X =

Dear :

In letters dated January 24, 2008, May 12, 2008, and May 21, 2008, your authorized representative 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:

On Date 3 Taxpayer A received a check for Amount F which was the distribution of the balance of his account in Plan X less federal income tax withholding of Amount E.

Taxpayer A represents that his failure to accomplish a rollover of Amount F was due to the error of Company C in failing to provide proper notice of Taxpayer A's right to elect an eligible rollover distributions as required under section 402(f) of the Code.

Taxpayer A, a 66 year old factory worker, asserts that on Date 1 he discussed his retirement from Company C and the distribution of his retirement benefits from Plan X, a company provided profit sharing and 401(k) plan, with the Company C Assistant Human Resources Director. At that meeting the Company C Assistant Human Resources Director provided no option or distribution alternative other than a lump sum distribution and provided forms for Taxpayer A to fill out and return with a notarized signature. Taxpayer A completed the forms and returned the notarized copies to Company C on Date 2. Documentation submitted reveals that the forms given to Taxpayer A on Date 1 did not include Company C's special tax notice regarding plan payments and as a result Taxpayer A asserts that he did not receive all of the information which, under section 402(f) of the Code, is required to be provided by a plan administrator regarding an eligible rollover distribution.

On Date 4, shortly after the expiration of the 60-day rollover period, Taxpayer A attempted to accomplish a rollover of Amount F at Bank A but learned that Bank A would not accept Amount F as rollover because the 60-day rollover period had expired. Taxpayer A deposited Amount F in a non-IRA account at Bank A and has not used Amount F for any other purpose.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount F contained in section 402(C)(3)(A) of the Code

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.

Section 402(f) of the Code provides for a written explanation to recipients of distributions eligible for rollover treatment. Section 402(f)(1) provides, in pertinent part, that the plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

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 is consistent with Taxpayer A's assertion that Taxpayer A's failure to accomplish a rollover of Amount F was due to the error of Company C in failing to provide proper notice of Taxpayer A's right to elect an eligible rollover distribution as required under section 402(f) of the Code.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount F, or any portion thereof, to 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.

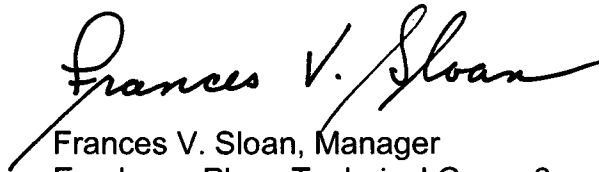
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If you wish to inquire about this ruling, please contact

Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in black 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