



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201009016

DEC 09 2009

Uniform Issue List: 408.03-00

SE: T:EP: RAT3

Legend:

Plan X	=
Amount B	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Company A	=
Company B	=
Company C	=

Dear:

This is in response to a request you submitted on July 6, 2009, as supplemented by additional information submitted on September 28, 2009, October 6, 2009, and November 18, 2009, 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:

You assert that your failure to accomplish a rollover of a plan loan balance of Amount B from Plan X within the 60-day period prescribed by section 402(c)(3) of

the Code was due to Company B's error in failing to process your rollover request. You assert that your intent was to complete a direct rollover of the assets of Plan X to an eligible retirement plan of Company B.

You maintained a plan loan from Plan X while employed with Company A in the amount of Amount B. On Date 1, your employment with Company A ended. Three days later, on Date 2, you began employment with Company B. You intended to perform a direct transfer of the balance of Plan X, including your loan balance, to an eligible retirement plan with your new employer, Company B. Company A's plan permits you to roll over the balance of Plan X, including your plan loan, to an eligible retirement plan and Company B maintains an eligible retirement plan which permits the rollover of loan balances.

Company C is the administrator of Company B's plan. You have documented that on Date 1, you completed paperwork, sent to you by Company C, in order to effectuate a transfer of your balance in Plan X, and the attendant loan, to an account that was to be established in Company B's plan. You assert that you communicated with Company C regarding the completion of a rollover during the following sixty-day period. On Date 3, you received an e-mail from a Company B representative which included a "Loan Rollover Form" used to initiate a transfer of your full account balance. You completed the forms and faxed them to the Company B representative from whom you had received an e-mail on Date 3.

On Date 4, after the 60-day rollover period had expired, you received notice that you had received a distribution of Amount B from Plan X and that you were in default on the concomitant plan loan.

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

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.

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), Question and Answer 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.

The information presented and documentation that you have submitted is consistent with your assertion that your failure to accomplish a timely rollover of Amount B was caused by Company B's error in failing to process your rollover request.

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 B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into another qualified plan. 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 B 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 402 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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If you wish to inquire about this ruling, please address all correspondence to
SE:T:EP:RA:T3.

Sincerely,

A handwritten signature in black ink, appearing to read "Frances V. Sloan", with a large checkmark or flourish to the right.

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

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose