

200440026

Uniform Issue List: 402.03-00

JUL - 6 2004

Legend:

*T. EP. RA. UK*

Company M =

Amount A =

Plan X =

Company N =

Dear Ms. :

This is in response to correspondence dated March 8, 2004, as supplemented by correspondence and communications dated December 13, 2003 and June 15, 2004, in which you requested 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 were employed by Company M. You were a participant in Plan X, which was a retirement plan maintained by Company M for the benefit of its employees. Funds in Plan X were invested and maintained by Company N. On March 16, you terminated from employment with Company M.

Your intent was to receive a distribution of your account balance from Plan X and roll over this entire amount (Amount A) into an Individual Retirement Arrangement (IRA) which would be established with Company N. Pursuant to a Plan X statement you received from Company M, you received a distribution from Plan X on May 29, . The Plan X statement's explanation of the type of distribution was "Total Distribution—Direct Transfer—IRA". On May 29, , a check for Amount A was issued by Company N. The check stated that the payee was Company N, trustee for an IRA for your benefit. You contacted Company N and requested an application form to establish a Rollover IRA. The application form which Company N sent you, and which you completed on June 15, , was for establishing a non-IRA brokerage account. Company N did not notify you that the application form which you completed was incorrect.

Although your intent was to roll over Amount A into an IRA, your financial advisor informed you that he discovered that you had completed an incorrect application form

and you had not established an IRA. You have not withdrawn any amounts from this account; Amount A is still invested in assets in the brokerage account.

Based on these facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code regarding Amount A.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code.

Section 402(c) of the Code defines and provides the rules applicable to rollovers from exempt trusts.

Section 402(c)(1) of the Code provides that if—

(A) 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,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

(C) 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 so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(3) of the Code provides that the transfer must be made within 60 days of receipt. In general, section 402(c)(3)(A) provides that section 402(c)(1) shall not apply to any transfer made after the 60<sup>th</sup> 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), 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.

Page 3

The information you presented demonstrates that you relied upon Company N to provide you with the correct application form to establish a Rollover IRA, which was your intent. Company N provided you with an incorrect application form to complete. Because of this, Amount A was not deposited into an IRA.

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

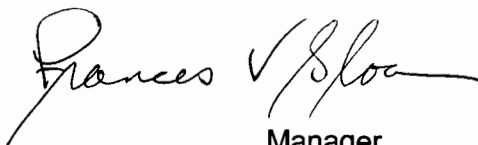
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) 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.

If you wish to inquire about this ruling, please contact  
Please address all correspondence to

Sincerely yours,



, Manager  
Employee Plans Technical Group 3

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