

200446031



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 402.03-00

AUG 17 2004

SE:T:EP:RA:T3

Legend:

Company A =
Advisor B =
Administrator C =
Company D =
Amount E =
Amount F =
Amount G =
Plan X =

Dear

This is in response to a request submitted by letter dated June 14, 2004, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated July 20, 2004, August 4, 2004, and correspondence faxed to us on August 11, 2004, supplemented the request.

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

You retired from Company A in _____, at which time you began to receive periodic distributions from Plan X, a plan maintained by Company A which is represented to be qualified within the meaning of section 401(a) of the Code. You received periodic distributions through _____. In _____ your periodic distribution was Amount E.

Your Plan X account originally consisted of approximately 78 percent employer stock and 22 percent of diversified fund securities. On August 5, _____ you converted your diversified investments into Company A stock, so that after such investment change date your account consisted of 100 percent of Company A stock.

You approached Advisor B for assistance in determining your Net Unrealized Appreciation and cost basis for the purpose of requesting a distribution from Plan X. Advisor B calculated your Net Unrealized Appreciation and your cost basis in the stock. The calculations turned out to be incorrect. In September _____ acting, in part, on reliance from Advisor B, you decided to take a lump sum distribution of your account balance from Plan X and roll over a part of it into an IRA. In a signed affidavit provided to the Internal Revenue Service, Advisor B has stated that if he had found any contrary information to that information which he gave you, he would have informed you of such.

On September 7, _____, Plan X Administrator C effectuated a rollover of _____ shares of Company A stock, the value of which totaled Amount F, to an individual retirement arrangement ("IRA") at Company D. Amount F equaled your contributions to Plan X and Company A's matching contributions made on your behalf to Plan X. Stock, whose value at the time was Amount G, was distributed to you by Plan X. You believed, based on advice from Advisor B, that the shares totaling Amount F in value which were rolled over into your IRA represented the cost basis of the shares of stock in your Plan X account, and that the shares totaling Amount G in value represented the net unrealized appreciation in the shares of stock held in your Plan X account. It was in January _____ when you received Form 1099-R, that you realized that the net unrealized appreciation in your shares of stock had been incorrectly determined, and that your and Advisor B's understanding of the tax implications surrounding your rolling over the _____ shares of Company A stock into an IRA was in error. Upon realizing this, you contacted Company A and requested that you be permitted to return the distributed stock to Plan X. Company A informed you that this could not be done.

You now desire to roll over the remainder of Company A stock which was distributed from Plan X into an IRA set up and maintained in your name.

Based on the foregoing, you request that the Internal Revenue Service waive the 60-day rollover limitation under section 408(d)(3) of the Code in order to allow you to roll over the Plan X distribution to an IRA.

Section 402(c) of the Code provides that 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 and 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 gross income for the taxable year in which paid. Section 402(c) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property.

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Section 402(c)(3) of the Code provides, in 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 408(d)(3)(I) 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.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, 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.

You requested a distribution from Plan X and accomplished a partial rollover of said distribution based on advice from your tax advisor, Advisor B, which proved to be incorrect. Had you received advice which fully explained the tax consequences to you, you would not have taken the actions described herein with respect to your IRA X account, but would have taken action consistent with minimizing the tax consequences associated with receiving a lump sum distribution from Plan X. Immediately upon learning of the error you attempted to correct the situation by attempting to roll over the Company A stock distributed from Plan X back to Plan X. Your request was denied.

Therefore, pursuant to section 402(c)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of the shares of stock distributed from Plan X to you and not previously rolled over into an IRA by the administrator on or about September 7, 2001. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, the contribution of the shares of stock distributed from Plan X to you into an IRA set up and maintained in your name will be considered a rollover contribution within the meaning of section 402(c) of the Code.

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code with respect to calendar years 2001 and 2002.

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 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 ***** (ID **_****) at (***) ***_****. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: