



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200524033

MAR 22 2005

Uniform Issue List: 402.00-00

SE: T: EP: RA: T3

Legend:

Taxpayer A =  
Amount D =  
Company W =  
Plan X =  
IRA Y =

Dear [REDACTED]

This is in response to your letter dated July 15, 2004, as supplemented on December 15, 2004, and January 12, 2005, in which you request 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:

Taxpayer A was an employee of Company W and participated in its retirement plan, Plan X. Company W filed for bankruptcy in year [REDACTED]. At the time Company W filed for bankruptcy, Taxpayer A was receiving workman's compensation for a disability from a neck injury; was receiving medical treatment including therapy; and was under driving restrictions.

Taxpayer A's last day of employment with Company W was in February 2003. In November 2003, Taxpayer A received Amount D, by mail, in the form of a check with no accompanying documentation or instructions as to the nature of the check. Taxpayer A had not requested any distribution from his Plan X, and did not understand why he had receiving a check. No documentation advising Taxpayer A of his rights (rollover rights, direct transfer rights) accompanied the check. Since Taxpayer A was unaware of the nature of the check at the time of receipt, he deposited the check in his checking account.

Taxpayer first became aware of the rollover requirements concerning Amount D by chance in a general conversation during a vocational rehabilitation training class. At that point the 60-day rollover period with respect to Amount D had already expired. On or about March 4, 2004, Taxpayer A wrote to the Internal Revenue Service ("Service") asking for guidance and permission to make a rollover contribution of Amount D. On March 16, 2004, Taxpayer A deposited Amount D as a rollover contribution into IRA Y.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and against equity or good conscience.

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) (which excludes rolled over amounts from gross income) 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 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan

so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401(a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections 401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

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 on behalf of Taxpayer A demonstrates a failure on his part to timely accomplish a rollover of Amount D distributed from Plan X primarily because the Taxpayer, who had not requested the distribution, was unaware of the nature of the check when he received it. Taxpayer A had terminated his employment with Company W because of a disability approximately nine months prior to his unexpectedly receiving a check in the amount of Amount D. Taxpayer A never requested a distribution from Plan X. Amount D arrived with no proper accompanying documentation or instructions from Company W. Upon learning of the rollover rules by chance in a conversation with a vocational therapist, Taxpayer A promptly took steps to seek assistance from the Service, and placed Amount D into IRA Y.

Thus, based on the above, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover period found in Code section 402(c)(3)(A). As a result, the Service will treat Taxpayer A's March 2004 rollover contribution of Amount D into IRA Y as a valid rollover within the meaning of Code section 402(c).

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

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Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact Valmore Cогnetta, I.D. # [REDACTED]  
[REDACTED] at [REDACTED] Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

*Frances V. Sloan*

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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