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

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN - 8 2005

Uniform Issue List: 402.00-00

T:EP:RA:T:3

Legend:

Taxpayer A =
Amount A =
Amount B =
Plan S =
Plan P =
Financial Firm P =
Financial Firm A =
IRA XY =
Number N =

Dear [redacted]

This is in response to the September 21, 2004, and February 28, 2005, letters submitted on your behalf by your authorized representative, 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:

On January 16, 2003, Taxpayer A gave written instructions to Financial Firm P, trustee of Plan S and Plan P, by completing Financial Firm P 's Savings and Pension Plan Transfer Request form to transfer all of his retirement monies in Plan S and Plan P via a trustee to trustee transfer to a new IRA XY account at Financial Firm A. Taxpayer A called Financial Firm A at the time of his request to obtain the IRA account number he was to list on the Financial Firm P forms for each plan and was told by Financial Firm A personnel to use number N.

You represent that Taxpayer A was told by Financial Firm A that he would need two IRA account applications, one for each plan.

You represent that at the time Taxpayer A completed the Financial Firm A applications in January 2003, he did not notice any differences between the account applications because they appeared identical and he relied upon Financial Firm A's advice that they would send him two IRA account applications because he had two retirement plans.

Financial Firm A received the completed applications on January 16, 2003, but only processed one application that day because of a duplicated, pre-assigned, and pre-printed number error that was noted by Financial Firm A on the applications the other application was pulled aside for correction. In an attempt to solve the problem another document number was assigned to that application. However, in the confusion the monies from Financial Firm P were deposited into the non-IRA account on January 21, 2003.

You represent that this error in assigning the Number N, the number of IRA XY to a non-IRA account by employees of Financial Firm A caused the failure of the establishment of an IRA rollover of Amounts A and B within the 60-day roll over period.

Taxpayer A subsequently checked on his IRA XY via Financial Firm A's website to ensure (1) that all his retirement monies were received and credited to his newly established IRA XY account and (2) that Number N, the account number of his IRA XY as viewed on Financial Firm A's website agreed with the account number Taxpayer A listed on Financial Firm P's transfer request form and on Financial Firm A's IRA XY applications.

Taxpayer A noted at the time he was viewing his IRA XY account that the website contained several references to IRA's and the abbreviation IRA on the border and at the top of the page in large print. Taxpayer A represents that these references to IRA's, served to further reinforce Taxpayer A's belief that Financial Firm A had in fact received all his retirement money and credited them to his IRA XY account for his benefit and the account he was looking at on line was in fact an IRA account that he established on January 10, 2003.

You represent that Financial Firm A made two errors. First, it provided Taxpayer A with two account applications, one an IRA application and the other a non-IRA Account application, with duplicated pre-assigned and pre-printed numbers. Second, it assigned what should have been the IRA XY account number, Number N, to the non-IRA account application in order to consolidate two accounts into one.

Taxpayer A called Financial Firm A to inform them of the error and to request a correction after meeting with his CPA in March 2004, and learning that financial reports from Financial Firm A were not consistent with reports from an IRA. You represent that Financial Firm A informed Taxpayer A that they would not correct the problem without permission from the Internal Revenue Service.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amounts A and B from Plan S and Plan P.

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 occur 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 that his failure to timely accomplish a rollover of Amounts A and B distributed from Plan S and Plan P was a result of Financial Firm A's errors. Financial Firm A erroneously provided an incorrect application to Taxpayer A; erroneously assigned a valid IRA account number to a non-IRA account and then transferred amounts A and B to a non-IRA account contrary to Taxpayer A instructions. Taxpayer A took reasonable steps to insure that the monies were correctly deposited.

Thus, based on the above, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amounts A and B from Plan S and Plan P.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A and B, 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.

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 [redacted]

[redacted] Please address all correspondence to [redacted]

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

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