



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

200634066

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR - 5 2006

Uniform Issue List: 402.00-00
402.08-00

T:EP:RA:UK

Legend:

Taxpayer A =

Taxpayer B =

Individual C =

Amount D =

Amount E =

Amount F =

Company W =

Company X =

Company Y =

Plan X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Date 14 =

Month 1 =

Court T =

Case U =

Dear :

This is in response to the letter dated _____, as supplemented by correspondence received by the Internal Revenue Service on _____, and on _____, in which your authorized representative on your behalf requests a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the "Code").

This ruling request is based upon Taxpayer A's representation that his failure to accomplish a rollover within the 60-day period prescribed by Code section 402(c)(3)(A) was due to errors outside his control and to miscommunication between taxpayer and Companies W and X regarding the termination of Plan X and the distribution options Taxpayer A had with respect to the benefits due him thereunder. Taxpayer A also represents that Amount F has been rolled over into an IRA set up and maintained in his name and has not been used for any other purpose.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A is married to Taxpayer B. Taxpayer A has not attained age 70 ½. Taxpayer A is an employee of Company W and had participated in its retirement plan, Plan X, until Plan X's termination which was scheduled to be effective on or about Date 8, 2002. It is represented that Plan X was qualified within the meaning of section 401(a) of the Code at all times relevant to

this ruling request.

As a result of the above-referenced scheduled termination of Plan X, Taxpayer A was due a distribution of his Plan X account balance which approximated Amount F. On or about Date 1, 2002, Company W sent correspondence to Taxpayer A relating to his Plan X account balance. The Date 1, 2002 letter indicated that Plan X was terminated effective Date 8, 2002, and that affected Plan X participants had until Date 10, 2002, "to request distributions and rollovers". The Date 1, 2002 letter also referred to "mandatory federal withholding of 20% of the amount distributed" if Taxpayer A were to receive his Plan X directly but it did not advise Taxpayer A that he could roll over the full amount of his Plan X distribution, including the 20% withheld, if he had the requisite funds with which to accomplish the rollover. It has been represented that Taxpayer A did not receive the Date 1, 2002 letter until a date in calendar year 2003 which date was after the date he received the first check (dated December 9, 2002) referenced below.

In early Month 1, 2002, Taxpayer A received additional correspondence dated Date 2, 2002, from Company X, the Plan X custodian, relating to his Plan X account balance. The Date 2, 2002 letter, in part, indicated that Plan X was terminated effective on Date 4, 2002, and outlined Taxpayer A's options with respect to the Plan X distribution he was to receive in the amount of Amount F. On or about Date 3, 2002, Taxpayer A received more correspondence from Company X retracting the Date 2, 2002 letter and referring Taxpayer A to the Date 1, 2002 letter.

On or about Date 4, 2002, Plan X was, in fact, terminated and shortly thereafter, on a date in either later December, 2002 or early January, 2003, Taxpayer A received a check dated Date 9, 2002, in the amount of Amount D, which was Amount F less Amount E (the 20% mandatory Federal tax withholding). Date 9, 2002 (the date of the check) was after Date 10, 2002 (the date referenced in the Date 1, 2002 correspondence) by which Taxpayer A had either to elect to receive a distribution or to directly roll over his Plan X account balance).

Taxpayer A subsequently advised Company X that the instructions which he had received regarding his Plan X distribution were unclear and that he would not cash the Date 9, 2002 Plan X distribution check that he had received. In this regard, documentation submitted with this ruling request indicates that, on the advice of Individual C, a certified public accountant, on or about Date 11, 2003 Taxpayer A sent two letters to Company X. The first letter indicated that Taxpayer A was returning the Date 9, 2002 check and requested that Company X directly transfer Amount F to an account with Company Y. The second letter made a second request for Company X to transfer Amount F to an account with Company Y and also asked Company X to rescind the Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc, which it has issued Taxpayer A. On or about Date 12, 2003, Company X returned the Date 9, 2002, check to Taxpayer A.

On or about Date 13, 2003, at the behest of Individual C, Taxpayer A sent two letters to Company W. In one letter, Taxpayer A asked Company W to direct Company X to directly

transfer Amount F to an account with Company Y and also asked Company W to direct Company X to rescind Taxpayer A's Form 1099-R. In the second letter, Taxpayer A again asked Company W to direct Company X to directly transfer Amount F to an account with Company Y. In a letter dated Date 14, 2003, Company W denied both of Taxpayer A's requests.

On or about Date 5, 2003, Company X issued a second Plan X distribution check in the amount of Amount D to Taxpayer A.

On or about Date 6, 2003, which was within 60 days of Date 5, 2003, Taxpayer A rolled over Amount D into an individual retirement account ("IRA") set up and maintained in his name, with Company Y. The next day, Date 7, 2003, which was also within 60 days of Date 5, 2003, Taxpayer A rolled over Amount E into the same Company Y IRA.

During calendar year 2005, Taxpayer A received a notice of proposed changes to his calendar year 2002 Federal Form 1040 relating to his non-reporting Amount E to the Internal Revenue Service. The issue of his receipt of Amount E during calendar year 2002 is currently before Court T docketed as Case U. Neither the above-referenced notice of underreporting of income nor Case U reference Taxpayer A's receipt of Amount D.

Documentation included with this ruling request includes an "Information Return Transcript" with respect to Taxpayer A's Tax Year 2002 which indicates that Taxpayer A received a qualified plan distribution in the amount of Amount F during calendar year 2002.

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 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

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 presented and documentation submitted by Taxpayer A supports his assertion that his failure to accomplish a rollover within the 60-day period prescribed by Code section 402(c)(3)(A) was due to errors outside his control and to miscommunication between taxpayer and Companies W and X regarding the termination of Plan X and the distribution options Taxpayer A had with respect to the benefits due him thereunder.

Thus, based on the above, the Service hereby waives the 60-day rollover period found in Code section 402(c)(3)(A) with respect to the distribution of Amount F from Plan X. As a result, Taxpayer A's rolling over Amount D on Date 6, 2003, and his rolling over Amount E on Date 7,

2003, into IRA Y are deemed to constitute valid rollovers under Code section 402(c)(3) as long as there was compliance with the conditions of Code section 402(c), excluding the 60-day requirement.

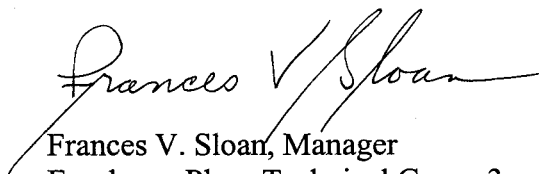
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to your authorized representative.

If you wish to inquire about this ruling, please contact _____ (I.D. # - _____), at () _____ (not a toll-free number). 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 letter ruling
Notice of Intention to Disclose