



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200613037

JAN - 5 2006

SE:T:EP:RA:T3

Uniform Issue List: 402.00-00

Legend:

Decedent A =
Date C =
Date D =
Date E =
Amount F =
Amount G =
Amount H =
Plan X =
IRA Y =

Dear

This is in response to your request dated March 26, 2005, as supplemented by an undated letter, and correspondence dated December 11, 2005, in which you request 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 represent that Decedent A was a participant in Plan X. Upon his death, you received Amount F from Plan X on or about Date C, 2004, and rolled such amount into IRA Y on

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or about Date D, 2004. Date D, 2004 was within 60 days of the date you received Amount F. Amount F is the value of the funds in Plan X (Amount G) minus 20 percent withholding (Amount H). You have not provided to the Service any information evidencing a request on your part to the administrator of Plan X not to withhold Amount H for Federal tax purposes. In the following year, 2005, you received a refund of Amount H. On Date E, 2005, you attempted to roll over Amount H to IRA Y. Date E, 2005, was more than 14 months after the initial distribution from Plan X.

You have presented no evidence to the Service that you had Amount H, or any portion thereof, available to be rolled over into either IRA Y or another IRA within the 60 day period applicable to the distribution you received from Plan X, or that the failure to accomplish a timely rollover was caused by factors outside of your control.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to Amount H contained in section 402(c)(3) of the Code in this instance.

Section 402(c) of the Code provides that if 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 any 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 in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant 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 402(c)(3)(B) 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, (January 27, 2003), 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.

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The information presented, and documentation submitted, by you demonstrates that your failure to accomplish a timely rollover was caused by your failure to notify the administrator of Plan X as to how you wanted the funds payable to you from such plan distributed. You have not asserted that you had Amount H, or any portion thereof, available to be rolled over into an IRA within the 60-day period applicable to your Plan X distribution and you have not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected your inability to timely roll over Amount H, or any portion thereof, to an IRA. Rather, the information submitted by you demonstrates that you are solely responsible for failing to timely deposit Amount H into an IRA.

Therefore, under the circumstances presented in this case, the IRS declines to waive the 60-day rollover 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.

If you wish to inquire about this ruling, please contact ***** (ID **-****) at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T:3

Sincerely yours,

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

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