



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

200615031

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 18 2006

Uniform Issue List: 402.00-00

SE. T. EP. RA. T3

Legend:

Taxpayer A =

Taxpayer B =

Amount D =

Company V =

Company W =

Plan X =

Date 1 =

Address A:

Dear :

This is in response to your letter dated _____, as supplemented on _____, 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 is married to Taxpayer B. Neither Taxpayer A nor Taxpayer B has attained age 70 ½. Taxpayer B formerly participated in Plan X which was sponsored by Company V. Company W was the custodian of Plan X.

During calendar year _____ Company V terminated Plan X. During said year, Company W sent a check in the amount of Amount D and an accompanying Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., to Taxpayer B at Address A. Taxpayer B asserts that she had not resided at Address A since

calendar year _____ and she also asserts that she never received said check. Company W eventually forwarded the full Amount D to the Internal Revenue Service ("Service") which was also provided a copy of the Form 1099-R relating to Taxpayer B's Plan X distribution. On or about Date 1, _____ Taxpayers A and B were sent a CP2000 Notice relating to calendar year _____ which asserted that they had failed to take Taxpayer B's calendar year _____ Plan X distribution into income for _____. After receipt of the CP 2000 Notice, Taxpayer B requested, and received, from the Service a copy of the above-referenced Form 1099-R. This request for an extension of the 60-day rollover period soon followed.

Based on the above 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 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 B asserts that her failure to accomplish a timely rollover was caused by her not receiving either the check for Amount D or the accompanying Form 1099-R until she was notified by the Service that it had been sent the entire Plan X distribution due her, totaling Amount D, by Company W.

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 Amount D distributed from Plan X during calendar year

As a result, Taxpayer A is granted a period not to exceed 60 days as measured from the date of this ruling letter to roll over an amount not to exceed Amount D into one or more IRAs described in Code section 408(a) set up and maintained in her name.

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.

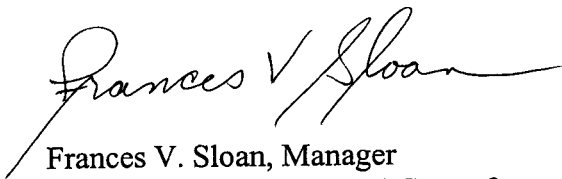
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Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to your authorized representatives.

If you wish to inquire about this ruling, please contact _____, Esq. (I.D. #
at _____ . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in black ink and is positioned above the typed name and title.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose