



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

FEB - 7 2006

Uniform Issue List: 402.00-00

200618028

T. EP: RA: TB

**Legend:**

Company A =

Amount B =

Amount C =

Amount D =

Date E =

Date F =

Date G =

Date H =

Date J =

Plan X =

Dear

This is in response to your request dated September 12, 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"). Correspondence dated October 26, 2005, November 29, 2005, and January 1, 2006, supplemented the request.

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

You represent that you received a distribution from Plan X in the amount of Amount D on Date E, 2005. Amount D represents the gross distribution, Amount B less federal income tax withholding of Amount C.

The information you presented indicates that during the 60-day period (which would have expired on or about Date F, 2005) you made no attempt to rollover the funds. Your representative stated in a conference on December 14, 2005, that you first considered rolling over the funds when you consulted with a financial advisor after the 60-day period had expired. Further, although you asserted that your ability to rollover was affected by your medical conditions and treatments for such condition, correspondence submitted by your authorized representative indicated that you were admitted to the hospital on Dates E 2004, Date H, 2005, and Date J, 2005. Date E occurred more than 3 months prior to the 60-day period expiring. Date H, 2005 occurred 28 days after the period expired and Date J, 2005, occurred more than 4 months after the 60-day period expired. At no time during the 60-day period were you hospitalized, and there was no documentation as to your incapacity during the 60-day period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount B 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.

We do not believe that the information presented, and documentation submitted, demonstrates circumstances that would justify a waiver of the 60-day rollover period pursuant to section 402(c)(3)(B) cited above. You have not presented any information which indicates that you attempted to rollover, or had any intention to accomplish a rollover during such period. The ability to rollover Amount B was, at all times, within your control.

Therefore, under the circumstances presented in this case, the Service 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.

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

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,

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

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

CC: