

FEB 5 2004

200418048

Uniform Issue List 402 03-00

T:EP:BA:UK

Legend:

Company A =

Amount B =

Plan X =

Dear

This is in response to correspondence dated August 11, 2003, as supplemented by correspondence and communications dated November 25, 2003 and January 14, 2004, in which you requested 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 worked for Company A from age to age . The department in which you worked informed you that Company A planned to outsource the work of your department. You were told that your department would be shut down and that most of the employees would no longer be needed. In , you were diagnosed with Parkinson's disease and on you were granted a leave of absence due to disability. You were terminated from employment on effective

You were a participant in Plan X, which was a retirement plan maintained by Company A for the benefit of its employees. When you were advised that your employment was being terminated, you had to decide, among other issues, what to do with your investments in Plan X. Company A gave you with a booklet that provided plan information in a general form, including selected Federal income tax consequences. In addition, the booklet advised you to consult with a tax advisor to determine the tax consequences of the various distribution options. When you consulted with your tax preparer, you were told that your Plan X account was not large enough to result in significant income tax consequences if you received your total Plan X distribution. You have stated that your knowledge of English is limited since it is your second language and you did not really understand the contents of the booklet provided by Company A.

On _____ you requested and received Amount B, which was a distribution of the balance to your credit in Plan X, net of Federal taxes which were withheld. You deposited the entire amount which you received into a savings account at a bank. This entire amount is still invested in a money market account at the bank. In _____, you asked a relative who was a CPA to review your Federal tax return for _____ since your tax liability was much larger than you expected. She informed you that your total distribution from Plan X could have been rolled over to an Individual Retirement Arrangement (IRA). You state that if you had understood that these amounts could have been rolled over into an IRA which would have permitted you to reduce your tax liability, contrary to what you had been told by your tax preparer, you would have done so.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B, because the failure to waive such requirement would be against equity or good conscience.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code.

Section 402(c) of the Code defines and provides the rules applicable to rollovers from exempt trusts.

Section 402(c)(1) of the Code provides that if-

(A) 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,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

(C) 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 so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(3) of the Code provides that the transfer must be made within 60 days of receipt. In general, section 402(c)(3)(A) provides that section 402(c)(1) shall not apply to any transfer 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.

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), 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 you presented demonstrates that you relied upon the advice of your tax preparer who provided you with incomplete and erroneous information regarding the tax effects of a rollover of your Plan X distribution to an IRA. Since you discovered the advantages of such a rollover in 2003, you could not satisfy the requirement that Amount B be deposited into an IRA within 60 days of the distribution from Plan X. The failure to deposit Amount B into a Rollover IRA within the 60-day period was beyond your reasonable control and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount B (less amounts described below). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount B (less amounts described below) into a Rollover IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are **met** with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 402(c) of the Code.

In accordance with section 402(c)(4)(B) of the Code, this ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) of the Code.

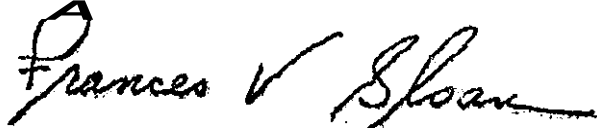
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact
Please address all correspondence to

Sincerely yours,

A handwritten signature in black ink that reads "Frances V Sloan". The signature is written in a cursive style with a large initial 'F' and a checkmark-like 'V'.

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Technical Group 3
Employee Plans

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

cc: