



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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MAR 09 2004

Uniform Issue List: 408.03-00

SE.T:EP:RA:T3

Legend:

Taxpayer A =

Amount D =

Amount E =

Employer C =

Employer M =

Plan X =

Plan Z =

Dear

This is in response to your letter dated October 8, 2003, as supplemented by correspondence dated February 5, 2004, in which you requested 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:

Employer C maintained Plan X, a plan qualified within the meaning of Code section 401(a) which contains a Code section 401(k) cash or deferred arrangement (CODA).

Taxpayer A left Employer C and received a distribution of Amount D from Plan X on May 21, 2003. On August 15, 2003, Taxpayer A rolled over Amount E, a portion of

Amount D, into Plan Z, a plan qualified within the meaning of Code section 401(a) sponsored by Employer M.

Taxpayer A was subsequently informed by his financial advisor that the rollover of Amount E was beyond the 60-day period allowed for a rollover.

Taxpayer A represents that he was misinformed about the 60-day rule because of a prior timely rollover event. In the prior event, although he completed the rollover transaction within the required 60 days, he operated under the belief that the correct rollover period was 90 days instead of 60 days.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount E because the failure to waive such requirement would be 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) 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, 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.

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The information presented by Taxpayer A demonstrates a mistake on the part of Taxpayer A resulting from his misunderstanding about the 60-day rule. Thus the facts surrounding this request indicate that Taxpayer A mistakenly believed that all of the rollover requirements including the timeliness requirement had been satisfied, and that his mistake was reasonable.

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 E.

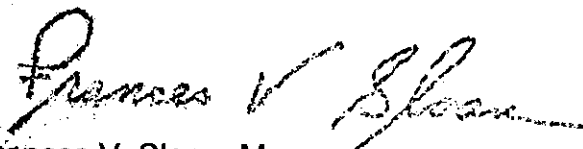
Thus, Taxpayer A is deemed to have made a timely rollover of Amount E into Plan Z on August 15, 2003. Provided all other requirements of § 402(c) of the Code were met with respect to said August 15, 2003, transaction, Amount E will be considered a rollover contribution to Plan Z satisfying the requirements of Code § 402(c).

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
at 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 ruling letter
Notice of Intention to Disclose