TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200431022

U.I. L. 402.08-00

MAY 7 2004

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SE:T:EP:RA:T2

Legend:

Taxpayer A = ***************

Employer M = ***************

Employer N = ***************

Plan X = ***************

Amount B = ***************

Amount H = ***************

Company D = ***************

State F = ***************

State V = ***************

Firm G = ***************

Bank C = ***************

Account K = ***************

Amount J = ***************

Bank G = ***************

Account N = ***************

Dear ***************:

This is in response to your letter dated August 20, 2003, as supplemented by correspondence dated November 12, 2003, December 16, 2003, April 7, 2004, April 14, 2004, April 21, 2004, and May 4, 2004, in which you request, through your authorized representative, 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 penalties of perjury to support the ruling requested.

Taxpayer A participated in Plan X, a Code section 401(k) plan, maintained by Employer M. In Taxpayer A received a partial distribution from Plan X in the form of a direct rollover to an individual retirement arrangement (IRA). Taxpayer A was terminated from her employment subsequent to the purchase of Employer M by Employer N and moved to State F. Taxpayer A subsequently relocated from State F, and now resides in State V.

In Taxpayer A received a second distribution from Plan X in the amount of Amount B. Of this amount, $. was withheld in federal income taxes as indicated on Form 1099-R submitted by Taxpayer A. Taxpayer A asserts that the check in the amount of Amount H and the Form 1099-R issued by Company D on behalf of Employer M was mailed to her old address and was not forwarded to her. Company D is the custodian of Plan X. Taxpayer A further asserts that she became aware of the distribution when she contacted Company D about the status of her Plan X account. At this time, Taxpayer A was informed that her Plan X account balance had been distributed and the distribution check was mailed to her at her State F address.

Taxpayer A contacted the administrator of Plan X and informed him that she had not received the distribution check and that she was not aware that a distribution had been made to her. The administrator of Plan X agreed to cancel the original check and reissue a replacement check based upon a finding that the original check had not been cashed. Taxpayer A received the replacement check in the amount of Amount H on at her State V residence. Taxpayer A also received a reissued Form 1099-R for showing her State V address indicating that a distribution from Plan X was made to her in

On or about Firm G advised Taxpayer A to deposit the check while it sought a ruling requesting a waiver of the 60-day rollover requirement. Taxpayer A asserts that she deposited the check in the amount of Amount H into Account K, a checking account at Bank C. Account statements submitted with Taxpayer A's request indicate that a deposit of Amount J was made to Account K on Taxpayer A asserts that additional amounts were deposited into Account K on that date along with Amount H. Bank C was acquired by Bank G and you represent that Amount H is currently in held Account N. An account statement for Account N dated shows that Account N has a balance far in excess of Amount B.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B from Plan X.

Section 402(a)(1) 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) of the Code 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, in the manner provided under section 72 (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)(1) provides, generally, that if any portion of an eligible rollover distribution from a qualified employees trust is paid to the employee in an eligible rollover distribution and the employee 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, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Code section 402(c)(2) provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income(determined without regard to paragraph (1)).

Code section 402(c)(4) defines "eligible rollover distribution" as any distribution to the employee of all or a portion of the balance to the credit of the employee in a qualified trust, except that such term shall not include

(A) any distribution which is one of a series of a substantially equal periodic payments (not less frequently than annually) made-

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Code section 402(c)(8) defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distribute received the property distributed.

Code section 402(c) (3)(B) provides that the Secretary may waive the 60-day requirement under subparagraph (A) 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).

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) 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); (4) the time elapsed since the distribution occurred.

In this case, Taxpayer A asserts that she did not receive the original check in the amount of Amount H that was issued in After the administrator of Plan X discovered that the original check had not been cashed, he issued a replacement check in the amount of Amount H and reissued Form 1099-R. These new documents were mailed to Taxpayer A at her State V address and were received by Taxpayer A on Firm G asserts that Taxpayer A met with it on to discuss the distribution and what options were available to Taxpayer A. On the advice of Firm G, Taxpayer A deposited the check in the amount of Amount H into Account K at Bank C. Bank C was subsequently acquired by Bank G and Taxpayer A's assets, including Amount H, are now on deposit in Account N. Amount H continues to be held in Account N. Taxpayer A's request for relief was filed shortly after she deposited Amount H into Account K.

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 from Plan X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount B to an IRA. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to this contribution, we conclude that the 60-day rollover requirement is waived and that Amount B will be considered a valid rollover contribution within the meaning of Code section 402(c)(1).

This ruling assumes that Plan X meets the requirements of Code section 401(a) at all times relevant to this transaction.

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 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 ruling has been sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions concerning this ruling, please contact **************, SE:T:EP:RA:T2, ***************.

Sincerely yours,

(signed) JOYCE E. FLOYD
Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose