

Uniform Issue List: 402.03-00

JUN 24 2004

Legend:

Individual R =
Company M =
Amount A =
Amount B =
Amount C =
Amount D =
Amount E =
Investment Company H =
Plan X =

Dear :

This is in response to correspondence dated April 6, 2004, as supplemented by correspondence dated April 24, 2004 and June 7, 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:

Individual R was an employee of Company M and participated in Plan X, a plan sponsored by Company M for the benefit of its employees. In June , Company M terminated Individual R's employment. In mid-September , Individual R requested a distribution of his total accrued benefits in Plan X. Individual R's total accrued benefits in Plan X were Amount A. The total accrued benefits, Amount A, reduced by Federal income tax withholding, Amount B, were mailed to Individual R in the form of a check. The amount of the check was Amount C. Amount C was deposited in a credit union on

At the time of the distribution, you thought that you had until the due date for filing your Federal income tax return to roll over the distribution into an Individual Retirement Arrangement (IRA). Although your intent was to eventually roll over this distribution into an IRA, due to the extended hospitalization of your son, the time involved in selling your house, and Individual R's severance from employment with Company M, you wanted to wait until the due date of your return to consummate the rollover since you were concerned that the distribution might need to be used for other family expenses. In fact, during the time in which the Plan X distribution was held in the credit union, you used Amount D for daily living and medical expenses. You did not receive specific information from Company M regarding the necessity to roll over the distribution within 60 days. When you spoke with the third-party administrator of Plan X to request the distribution, although the representative stated that there was a time limit to roll over the funds, he did not specifically state what that time limit was. You thought that since an individual may make contributions to an IRA until April 15 of the following calendar year, that was the last day on which an IRA would accept a rollover.

On April 5, , Individual R went to a bank with the express purpose of establishing an IRA. The bank refused to establish an IRA, stating that the 60-day rollover period had elapsed. Soon after this, the bank accepted the funds and placed them in an IRA set up with Investment Company H. Amount C was placed into the IRA established by Investment Company H.

Based on these facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution from Plan X.

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 did not receive specific information from either Employer M or the Plan X third-party administrator regarding the necessity to roll over the distribution from Plan X within 60 days. Although your intent was to effect a rollover of the Plan X distribution, you thought that you had until April 15, 2004 to do so.

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 (which is Amount A less Amount D). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount E 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.

Please note that this letter ruling authorizes the rollover of Amount E (Amount A less Amount D). Amount E is less than Amount C. The difference between Amount C and Amount E may not be rolled over pursuant to this letter ruling.

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.

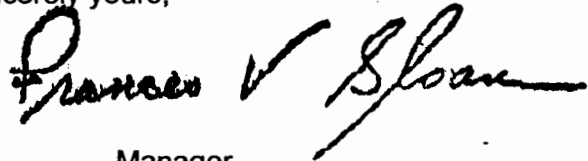
This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) of the Code.

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.

Page 4

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 long, sweeping underline.

, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose