

Department of the Treasury
Internal Revenue Service
Washington, D.C. 20224

200625038

MAR 29 2006

Uniform Issue List: 402.00-00

T: EP:RA:T3

Legend:

Taxpayer A =
Plan X =
Amount A =
Amount B =
Amount C =
Bank P =

Dear

This is in response to letters dated June 6, 2005, November 13, 2005, January 26, 2006, and January 31, 2006, submitted on your behalf by your authorized representative in which you request 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

Taxpayer A, age 72, represents that Plan X issued her a total distribution of her account balance in Plan X totaling Amount C. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a medical condition which left her confused and impaired her ability to handle her financial affairs. Taxpayer A further represents that the funds in question have not been used for any other purpose.

In early January 2005, Taxpayer A received a check for Amount B (Amount C less federal withholding of Amount A) representing the entire proceeds of her account in Plan X. On March 16, 2005, shortly after the expiration of the 60-day deadline, Taxpayer A deposited Amount B into a rollover IRA at Bank P.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and 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) (which excludes rolled over amounts from gross income) 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.

Section 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401(a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections

401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

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)(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.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to timely accomplish a rollover of Amount B was due to medical conditions beyond her control which resulted in mental impairment. When Taxpayer A was able to realize the 60-day rollover time period had passed she immediately took steps to complete the rollover which she had originally intended to complete.

Thus, based on the above, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover period found in Code section 402(c)(3)(A). As a result, the Service will treat Taxpayer A's March 16, 2005, rollover contribution of Amount B into her IRA as a valid rollover within the meaning of Code section 402(c).

In addition, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover period found in Code section 402(c)(3)(A) with respect to Amount A. Therefore pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount A to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

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

If you wish to inquire about this ruling, please contact _____ I.D. _____
_____, 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 letter ruling
Notice of Intention to Disclose