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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List 402.00-00

APR 20 2006

T:EP:RA:TZ

**Legend:**

Company A =  
Fund C =  
Company D =  
Individual E =  
Date F =  
Amount H =  
Plan X =

Dear

This is in response to your request dated on August 3, 2005, submitted by your authorized representative for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated January 9, 2005, January 26, 2006, January 30, 2006, and February 21, 2006, supplemented the request.

Under penalty of perjury, you have submitted the following facts and representations: You represent that you received a distribution from Plan X totaling Amount H. Plan X is a plan qualified under section 401(a) of the Internal Revenue Code ("Code"). You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by Individual E of Fund C, which led to Amount H being placed into a non-IRA account. You further represent that Amount H has remained in the non-IRA account and has not been used for any other purposes.

In 2003, you participated in Plan X with Company A. In 2003 you decided to withdraw Amount H from Plan X and invest it in Fund C. Company D was the manager of Fund C. Individual E, who works for Company D advised you to invest Amount H in Fund C in an

IRA. Relying on Individual E's expertise and Fund C's offering memorandum, you withdrew Amount H from Plan X and within 60 days of receiving the distribution, you deposited Amount H in an account with Fund C. Documentation submitted by you demonstrates that, at all times, both you and Fund C believed your interest in Fund C was validly invested in an IRA. It was not until March 2005 that you learned, from Individual E, that Fund C is not a bank or an approved non-bank trustee, eligible to hold IRA funds.

In an affidavit dated Date F, 2006, Individual E acknowledged that he advised you that you could invest Amount H in Fund C. Individual E states that he did not realize that an IRA had to be in the name of the financial institution as trustee or custodian for your IRA. He accepted your subscription without a financial institution as trustee or custodian.

As soon as you learned about the error, you arranged to seek a waiver of the 60-day requirement.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount H contained in section 402(c)(3) of the Code in this instance.

Section 402(c) of the Code provides that if 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, and the distributee 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, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) 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) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 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) 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); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by you is consistent with your assertion that your failure to accomplish a timely rollover was caused by a mistake made by Individual E of Fund C, which led to Amount H being placed into a non-IRA account. The information presented by you is consistent with your assertion that you attempted to rollover Amount H.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distribution of Amount H from Plan X. You are granted a period of 60 days measured from the date of the issuance of this letter to make your rollover. Provided all other requirements of section 402(c)(3)(A) of the Code (except the 60-day requirement) are met with respect to Amount D, such amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

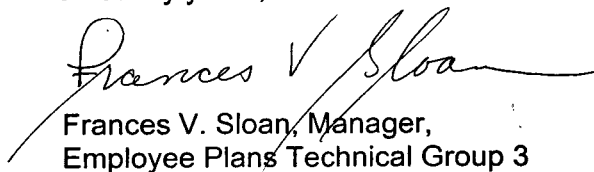
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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 (ID ) 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

CC: