



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

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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

UICs: 402.08-00  
402.08-01  
402.08-05

MAY 22 2006

T: EP: RA: T3

LEGEND:

Decedent:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Trust T:

Plan X:

Plan Y:

Company W:

Date 1:

Date 2:

Date 3:

Amount 1:

State W:

Dear :

This is in response to the , request submitted by your authorized representative, in which he, on your behalf, seeks letter rulings under section 402(c) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Decedent formerly participated in Plan X which is the successor plan to Plan Y. On or about Date 3, 1972, Decedent named his spouse, Taxpayer A, the sole beneficiary of his interest in Plan X. Said beneficiary designation remained in effect at Decedent's death. Company W was the custodian of Plan X at the time of Decedent's death.

Decedent, whose date of birth was Date 1, 1946, died on Date 2, 1988 without having attained age 70 ½. Taxpayer A, Decedent's surviving spouse, elected to defer receiving required distributions from Plan X until Decedent would have attained age 70 ½.

Prior to his death, Decedent, as Grantor, established Trust T. Taxpayer A and Taxpayer B, Decedent's father, were the co-trustees of Trust T. Taxpayers A and B were also the co-executors of the estate of Decedent.

It has been represented that Taxpayer C, Decedent's brother, was authorized to counter-sign requests for distribution with respect to Decedent's interest in Plan X.

On or about Date 3, 2004, Taxpayer B, as co-trustee of Decedent's Trust T, requested a distribution of the full amount standing to the credit of Decedent in Plan X. Trust T was named as the beneficiary of Decedent's Plan X interest on the withdrawal form. Taxpayer C also signed the withdrawal form. Company W processed the request, and distributed Amount 1 to the trustee of Trust T. Taxpayer B has submitted an affidavit with this ruling request in which he indicates that Taxpayer A was unaware that he, Taxpayer B, was not authorized to request said Plan X distribution. Taxpayer A has submitted an affidavit with this ruling request in which she indicates that she was unaware that Taxpayer B was not authorized to request the above-referenced Plan X distribution, and in which she also indicates that Taxpayer B did not advise her of where he intended to deposit Amount 1.

During calendar year 2005, Company W issued a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., which indicated a distribution totaling Amount 1 during calendar year 2004 to the trustee of Trust T. As noted above, Trust T was not the named beneficiary of Decedent's interest in Plan X.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That Taxpayer A was eligible to roll over the above-referenced Plan X Distribution totaling Amount 1 into an individual retirement account ("IRA") set up and maintained in her name; and

2. that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan X because the failure to waive such requirement would be a hardship and against equity or good conscience.

Section 402(a)(1) of the Code provides, generally, that, except as otherwise provided in section 402, any amount actually paid or distributed from a trust described in section 401(a) which is tax-exempt under section 501(a) shall be taxed to the distributee, in the taxable year of the distributee in which distributed, in the amount provided under section 72 (relating to annuities).

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)(4) of the Code provides, in relevant part, that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9), or any distribution which is one of a series of 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 expectancy) of the employee and the employee's designated beneficiary, or (ii) for a period of ten years or more.

Section 402(c)(8) of the Code, in relevant part, defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a), or (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract).

Section 402(c)(3)(A) states that, except as provided in subparagraph (B), any rollover within the meaning of Code section 402(c) must be accomplished within 60 days of the day on which the distributee received the property.

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 1.402(c)-2, Question and Answer 11, of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan no

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later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 402(c)(9) of the Code provides, generally, if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the regulations, Q&A-12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

Section 1.402(c)-2 of the regulations, Q&A 7(b) provides that any amount that is paid before January 1 of the year in which the employee attains (or would have attained) age 70 ½ will not be treated as required under section 401(a)(9) and thus is an eligible rollover distribution if it otherwise qualifies.

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.

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) 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.

With respect to your first ruling request, generally, if a decedent's qualified plan assets pass through a third party, e.g. an estate or a trust, and are then distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over the qualified plan proceeds into her own IRA.

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However, we note in this case that although Taxpayer B, acting as co-trustee of Trust T, requested the distribution of Amount 1 from Plan X, and that Taxpayer C counter-signed the request, Amount 1 was not payable to Trust T, but rather, pursuant to Decedent's Date 3, 1972 beneficiary designation, was payable outright to Taxpayer A, Decedent's surviving spouse. Thus, pursuant to Code section 402(c)(9), and the above-referenced Income Tax Regulations, Taxpayer A could have received a distribution from Plan X totaling Amount 1 and could have rolled it into an IRA set up and maintained in her name.

Thus, with respect to your first ruling request, we conclude as follows:

1. That Taxpayer A was eligible to roll over the above-referenced Plan X distribution totaling Amount 1 into an individual retirement account ("IRA") set up and maintained in her name.

With respect to your second ruling request, as noted above, Taxpayer A did not roll over the 2004 Plan X distribution into an IRA set up and maintained in her name within the requisite 60-day period. However, her failure to do so was the result of Taxpayer B's unauthorized request for the 2004 Plan X distribution, Taxpayer C's unauthorized counter-signing the request, and neither Taxpayer B nor Taxpayer C's advising Taxpayer A that the request was being made on behalf of Trust T not Taxpayer A, the appropriate recipient.

Therefore, in response to your second ruling request, 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 1 from Plan X. Thus, you are granted a period of 60 days from the issuance of this ruling letter to complete the rollover. Provided that there is compliance with all of the requirements of Code section 402(c), except the 60-day requirement, the rollover of an amount not to exceed Amount 1 into an IRA set up and maintained in the name of Taxpayer A will be treated as a valid rollover transaction within the meaning of Code section 402(c).

This letter assumes that Plan X was/is qualified within the meaning of Code section 401(a) and its trust tax-exempt within the meaning of Code section 501(a) at all times relevant thereto. It also assumes that the IRA into which Taxpayer A will roll over an amount not to exceed Amount 1 will be qualified within the meaning of Code section 408(a) at all times relevant thereto.

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.

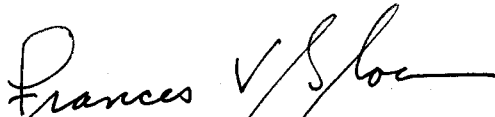
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This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to each of your authorized representatives.

If you wish to inquire about this ruling, please contact  
(I.D. # - ), at ( ) - (not a toll-free number). Please address all  
correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the typed name.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose