



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

Legend:

Taxpayer A = _____

Amount D = _____

Company R = _____

Plan A = _____

Advisors C = _____

Dear Ms. _____

In a letter dated December 16, 2003, as supplemented by correspondence dated March 11, 2004, you requested 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:

In June, _____, Taxpayer A retired from her employer. On _____, Taxpayer A received Amount D from Plan A, a qualified plan sponsored by her employer, in the form of a check payable to Company R F/B/O Taxpayer A. Taxpayer A's financial advisors, Advisors C, arranged for this check to be deposited in a retail, non tax-qualified, account rather than a rollover individual retirement account (IRA) or other tax qualified vehicle with Company R without Taxpayer A's knowledge and consent. Taxpayer A's advisors used this approach because they believed that either all or a portion of Amount D would be reinvested, within a short period of time, in any event within the requisite 60-day

rollover period, into a variable IRA annuity or other tax qualified vehicle.

It was Taxpayer A's intent when she requested the Amount D check be issued that the check be rolled over into an IRA or other tax qualified vehicle. Taxpayer A believed that her advisors, Advisors C, had accomplished said rollover.

Taxpayer A was never advised that Amount D was not in a qualified IRA rollover account. By the time Advisors C realized that Amount D was not in a qualified rollover account as it should have been, the 60-day period in section 402(C)(3)(A) of the Internal Revenue Code (the Code) had elapsed.

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) 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.

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 provided by Taxpayer A demonstrates a failure on her part to satisfy the requirements of Code section 402(c)(3)(A) which stemmed from her relying on Advisors C to place Amount D into either a rollover IRA or another tax-qualified rollover vehicle. Advisors C neglected to accomplish said rollover and did not take requisite action to insure that the retail account into which Amount D had been placed was timely converted to an appropriate rollover account. The actions of Advisors C resulted in Taxpayer A's failure to satisfy the Code section 402(c) rollover requirements.

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 D.

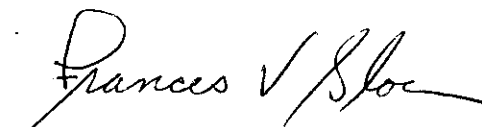
Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, or any portion thereof, to an IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions within the meaning of section 402(c) 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.

If you wish to inquire about this ruling, please contact Valmore Cagnetta, 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