



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

APR 29 2004

Uniform Issue List: 408.03-00

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Legend:

Taxpayer A = \*\*\*

Plan B = \*\*\*

IRA C = \*\*\*  
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Investment Firm D = \*\*\*

Investment Firm E = \*\*\*

Financial Advisor F = \*\*\*  
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Company G = \*\*\*

Dear \*\*\*:

This is in response to a request submitted on your behalf by your authorized representative by letter dated March 8, 2004, for a ruling to waive the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("Code").

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

On \_\_\_\_\_, Company G notified Taxpayer A that her Qualified Domestic Relations Order, awarding her a \_\_\_\_\_% interest in her former husband's Code section 401(k) account in Plan B, maintained by Company G, had been approved and a separate account in Plan B has been established in her name at

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Investment Firm D. At that time Taxpayer A understood that she was required to remove the funds from Plan B within 60-days of the notice. Taxpayer A then immediately notified Financial Advisor F with all the information necessary to complete a tax-free rollover to IRA C, maintained with Investment Firm E. Financial Advisor F was to send the required tax-free rollover request to Plan B.

Taxpayer A continued to receive periodic statements for her account in Plan B from Financial Advisor F. Taxpayer A inquired of Financial Advisor F each time she received a statement as to why the funds had not been rolled over. On each occasion Financial Advisor F advised her that everything was being processed. On \_\_\_\_\_, Financial Advisor F told her that he had contacted Investment Firm D, and that Investment Firm D considered her account separate from Company G and that Taxpayer A could leave her money in Plan B. Financial Advisor F then advised that she leave the money in Plan B. As of \_\_\_\_\_ Taxpayer A's funds remained in Plan B.

On \_\_\_\_\_, upon Financial Advisor F's receipt of the quarterly statement of \_\_\_\_\_ for Taxpayer A's account in Plan B, he informed her that Investment Firm D had liquidated her account on \_\_\_\_\_. Allegedly, a check payable to her had been issued for \$ \_\_\_\_\_, (less 20% federal tax withholding of \$ \_\_\_\_\_) and had been sent to Financial Advisor F's attention at Investment Firm E. Investment Firm E denies ever receiving or processing this check, and it was never cashed according to the records of Investment Firm D.

Taxpayer A contacted the Company G Participant Service Center, and she was informed that her account under Plan B had indeed been liquidated and that the transaction could not be reversed because a Form 1099R-Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., had been generated. However, Investment Firm D agreed to issue a replacement check to replace the lost check issued on \_\_\_\_\_. The replacement check was issued on \_\_\_\_\_.

On \_\_\_\_\_ within 50 days of the issuance of the replacement check to Taxpayer A, the replacement check was deposited into IRA C. Taxpayer A utilized other funds for the tax-withholding amount.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of \$ \_\_\_\_\_ from Plan B, because the failure to waive such requirement would be against equity or good conscience under the provisions of section 402(c)(3)(B) of the Code.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount distributed to any distributee by an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall

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be taxable to the distributee, in the taxable year of the distributee in which distributed section 72 of the Code (relating to annuities).

Section 402(c) of the Code (concerning rules applicable to rollovers from exempt trusts) provides, in part, that if any portion of the balance to the credit of an employee 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, 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)(8)(A) of the Code provides that a qualified trust means an employees' trust described in section 401(a) which is exempt from tax under section 501(a). Section 402(c)(8)(B)(i) of the Code provides that an "eligible retirement plan" includes an individual retirement account described in section 408(a).

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 except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60<sup>th</sup> day following the day on which the distributee received the property distributed. Subparagraph (B) of section 402(c)(3) provides that the Secretary may waive the 60-day requirement under subparagraph (A) 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 eligible rollover distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

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)(B) or 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; 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 indicates Taxpayer A did not receive the Plan B distribution check until after it was re-issued on \_\_\_\_\_ On \_\_\_\_\_, which was within 60 days of \_\_\_\_\_, Taxpayer A deposited this amount (along with other funds to make up for the 20% federal tax withholding) into IRA C. Therefore, since Taxpayer A's rollover was timely within the meaning of section 402(c)(3) of the Code, Taxpayer A does not require a waiver of the 60-day requiremen.

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Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service need not waive the 60-day rollover requirement with respect to the distribution of \$ from Plan B.

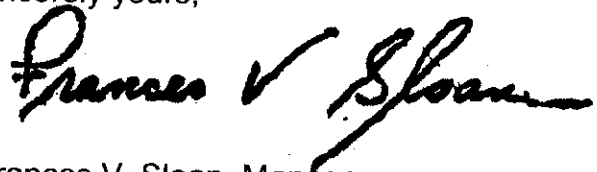
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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

A copy of this letter is being 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 \*\*\*, \*\*\*, 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 this letter  
Notice of Intention to Disclose, Notice 437

cc: \*\*\*  
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