200714029

Department of the Treasury
Internal Revenue Service

Uniform Issue List: 402.00-00

Date: JAN 1 2 2007

Legend:

Taxpayer A =

Taxpayer B =

Employer M =

Plan X =

Company C =

Amount D =

Amount E =

Dear :

This is in response to correspondence dated April 30, 2006, as supplemented by correspondence dated November 2 and December 5, 2006, in which your authorized representative requested on your behalf a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer B was the husband of Taxpayer A. Taxpayer B was employed by Employer M. Taxpayer B was a participant in Plan X, an employee retirement plan sponsored by Employer M which was a qualified plan as described in section 401(a) of the Code. Taxpayer B died on Taxpayer A was the surviving spouse of Taxpayer B and the named beneficiary of Taxpayer B's interest in Plan X.

Company C was the administrator of Plan X. At the direction of the trustees of Plan X, on March 19, 2005 Company C issued a check to Taxpayer A of Amount D, which was Taxpayer B's accrued benefit under Plan X payable to Taxpayer A due to his death. Of Amount D, Amount E was the taxable portion and the balance represented a return of Taxpayer B's after-tax employee contributions to Plan X. Neither the Plan X trustees nor Company C provided Taxpayer A with any written advice or direction regarding the rollover rules and the tax consequences of this distribution as required in section 402(f) of the Code, nor was oral advice given. Further, Taxpayer A was not advised of the portion of the distribution that was taxable and the portion that was not taxable.

Taxpayer A was unsophisticated in tax matters and relied upon her financial advisors, lawyers and accountants to advise her in this area. On March 15, 2006, Taxpayer A spoke to her accountant who immediately informed her of the 60-day rollover rule. Taxpayer A never rolled over any portion of the distribution into an Individual Retirement Arrangement (IRA) or other qualified plan and the 60-day rollover period has expired. Taxpayer A has represented that her original intent with respect to the above-referenced Plan X distribution was to defer the payment of taxes thereon.

Taxpayer A further represented that Amount E was deposited into her bank checking account and has not been withdrawn or used for any purposes. Upon the receipt of a favorable letter ruling, Taxpayer A intends to roll over Amount E into an IRA set up and maintained in her name.

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

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code.

Section 402(c) of the Code defines and provides the rules applicable to rollovers from exempt trusts. Section 402(c)(1) 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.

Code section 402(c)(4) provides, in relevant part, that an "eligible rollover distribution" is a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include--

(A) 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 expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Code section 402(c)(8)(B) defines an eligible retirement plan to include, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a qualified trust, and an annuity plan described in Code section 403(a).

Code section 402(c)(9) provides, in general, that the above rollover rules of Code section 402(c) apply to the surviving spouse of a deceased employee if, after the death of such employee, a qualified plan distribution attributable to said employee is paid to the spouse.

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 IRA constitutes one form of eligible retirement plan.

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 402(f) of the Code provides for a written explanation to recipients of distributions eligible for rollover treatment. Section 402(f)(1) provides, in pertinent part, that the plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

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.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by the failure of the Plan X administrator to properly provide a written explanation as required under section 402(f) of the Code. Taxpayer A has asserted that she intended to defer the payment of taxes on the Plan X distribution which she received and, to that end, would have rolled over the distribution of Amount E into her IRA if she had been aware of the rules governing rollovers. However, she did not satisfy the 60-day rollover requirement due to a mistake made by the Plan X administrator. The failure to deposit Amount E into a Rollover IRA within the 60-day period was beyond Taxpayer A's reasonable control and the failure to waive the 60-day requirement would be against equity or good conscience.

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 E from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E into a Rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount E, or any portion thereof, into an IRA as described in Code section 408(a), set up and maintained in the name of Taxpayer A, will be considered a rollover contribution within the meaning of section 402(c)(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 expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) of the Code.

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 this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact at (not a toll-free number). Please address all correspondence to .

Sincerely yours,

Frances V Sloan

, Manager
Employee Plans Technical Group 3

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