



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

MAR 15 2004

**Uniform Issue List: 402.00-00**

**Legend:**

Company A =

Plan X =

Plan Y =

Amount D =

Dear

This is in response to a request dated August 26, 2003, for a ruling to waive the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code"). Correspondence dated December 15, 2003, and March 3, 2004, supplemented the request.

You have submitted the following facts and representations:

You formerly were employed by Company A, which maintained Plan X. During the calendar year , you requested that your Plan X account balance be transferred, by means of a direct rollover, into Plan Y, a plan maintained by your then current employer. On or about October 15, , Plan X issued a check payable to Plan Y in the amount of Amount D, and mailed the check to your home address. Although the check was made payable to Plan Y, and thus could not be cashed or used by you, you neglected to immediately provide said check to Plan Y. When you realized the necessity of doing so, the 60-day period prescribed in section 402(c) had expired. The check, issued in the name of Play Y, has not been cashed. The 60-day rollover period ended on or about December 14,

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount D, because the failure to waive such requirement would be against equity or good conscience.

Section 402(c) of the Code provides that 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 and 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 gross income for the taxable year in which paid. Section 402(c) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property.

Section 402(c)(3) of the Code provides, in 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 408(d)(3)(I) 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, 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 check that you received was intended to be directly rolled over into Plan Y. This is indicated by the fact that the check was made out to Plan Y, and not to you. Because the check was not made out to you, it was impossible for you to use the funds for any purpose other than to roll them over into Plan Y. Your delay in attempting to deposit the funds in Plan X was due to your lack of understanding of the rollover rules.

Therefore, pursuant to section 402(c)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of the amount from Plan X. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions. The contribution of Amount D into Plan Y will be considered a rollover contribution within the meaning of section 402(c) of the Code.

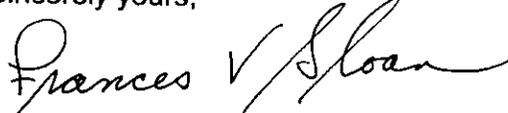
This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code

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 \*\*\*\*\* (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