



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200453022

OCT - 4 2004

SE.T.E.P.R.A.T.3

Uniform Issue List: 402.03-00

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Legend

Taxpayer A =       \*\*\*  
Taxpayer B =       \*\*\*  
Amount C =         \*\*\*  
Plan X =             \*\*\*  
IRA Y =             \*\*\*

Dear \*\*\*:

This is in response to your undated letter which we received on June 1, 2004, supplemented by faxed information dated June 29, 2004, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) 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 A was an active participant in Plan X. Taxpayer B is Taxpayer A's surviving spouse and, prior to the date on which he waived his right to receive a survivor benefit, was the designated beneficiary of Taxpayer A's account in Plan X. Taxpayer A's pension commencement date was February [REDACTED]. On February [REDACTED], Taxpayer A executed an election authorization form with respect to Plan X pursuant to which she chose to receive a lump sum distribution of her account balance with Plan X to be rolled over into IRA Y. At that time, Taxpayer B provided written consent to the distribution of Amount C from Plan X,

and waived his rights to a Joint and Survivor Annuity under Plan X. Plan X is a qualified plan as defined in section 401(a) of the Code.

On February [REDACTED], prior to the expiration of the 60-day rollover period prescribed in section 402(c)(3)(A) of the Code, Taxpayer A died. Taxpayer A had not set up IRA Y at that time. Taxpayer A was [REDACTED] as of her date of death.

On March [REDACTED], Taxpayer B received a check dated March [REDACTED], for Amount C addressed to IRA Y for the benefit of Taxpayer A. Upon receiving a waiver of the 60-day rollover rule, Taxpayer B will promptly deposit Amount C into an IRA set up and maintained in Taxpayer A's name.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount C, 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 (c) sets down the rules governing rollovers of "eligible rollover distributions" into "eligible retirement plans".

Section 402(c)(4)(A) of the Code defines "eligible rollover distribution" such that said term includes a single sum distribution made to a 55 year old qualified plan participant.

Section 402(c)(8)(B) of the Code provides, in relevant part, that an "eligible retirement plan" includes an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code.

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) 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 section 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 by Taxpayer B demonstrates that Taxpayer A had requested a lump sum distribution of her Plan X account balance and that the March [REDACTED] check was made payable to IRA Y for the benefit of Taxpayer A. Taxpayer A did not timely roll over the check dated March [REDACTED] payable to Taxpayer A's IRA Y or execute the documents to create IRA Y because of her death on February [REDACTED]. Taxpayer B did not receive the distribution check until March [REDACTED].

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 Amount C from Plan X. Taxpayer B, as surviving spouse and representative of Taxpayer A, is granted a period of 60 days from the issuance of this ruling letter to complete the rollover of an amount not to exceed Amount C into an IRA in Taxpayer A's name. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, this amount will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs under section 408(a)(6) of the Code).

The Service notes that the IRA into which Amount C will be rolled over will not have a designated beneficiary as that term is defined in Code section 401(a)(9). Thus, the Code section 401(a)(9) distribution period with respect to the rollover IRA referenced above is that applicable to an individual who died prior to having attained her required beginning date without having designated a beneficiary thereof.

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.

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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