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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG - 2 2006

Uniform Issue List: 402.00-00

SE:TEP:RA:T3

Legend:

Taxpayer A

Amount A:

Amount B:

Plan X:

Institution X:

Date 1:

Date 2:

Date 3:

Date 4:

Case X:

Court Y:

State Z:

Dear

This is in response to your request dated May 13, 2005, as supplemented by a letter dated July 27, 2006, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) 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.

Taxpayer A represents that she retired on disability from her employer on Date 1, 2001. At that time she applied for retirement funds with the retirement payer. This initial application was lost. Taxpayer A subsequently reapplied for retirement benefits. On or about Date 2, 2004, Taxpayer A received a distribution from Plan X totaling Amount B of which Amount A was eligible to be rolled over into an individual retirement account ("IRA"). Amount A was directly

deposited into her bank account. These funds remained in that account until Date 3, 2005 when the taxpayer transferred them into an IRA account.

It has been represented on your behalf that Plan X is a plan from which a distribution, when made, is eligible to be rolled over, or directly transferred, into an individual retirement account ("IRA").

It has also been represented on your behalf that, in Case X, Court Y of State Z ruled that an individual who received a distribution from Plan X eligible to be rolled over into an IRA had to be given the option of directly rolling over said distribution into an IRA. However, as indicated in a letter dated Date 4, 2005, sent to you by a representative of Institution X, you were not provided with the option of directly placing the eligible portion of your Plan X distribution into an IRA. The letter also indicates that you had been led to believe that said direct rollover would be accomplished.

Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to incorrect information provided her by personnel administrators of Institution X. Taxpayer A asserts that she was not told that she had the option of rolling over the lump sum payment directly into an IRA and she was not given that option at the time of distribution.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 402(c)(3) of the Code with respect to an amount not to exceed Amount A.

With respect to your ruling request, section 402(c) of the Code 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. 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 individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant 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 402(c)(3)(B) 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, (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 misleading and incomplete financial information offered by employees of Institution X which prevented her from making a timely rollover.

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 A from Plan X. Taxpayer A's contributing Amount A into an IRA on or about Date 3, 2005, is deemed to have constituted a timely rollover within the meaning of section 402(c)(3) of the Code provided all the other requirements of Code section 402(c) were met with respect to said contribution.

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.

A copy of this letter ruling is being sent to your authorized representative pursuant to a power of attorney on file with the Internal Revenue Service.

If you wish to inquire about this ruling, please contact ID #
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