

NOV 19 2004

200506030

Uniform Issue List: 402.03-00

SE.T. EP. RA. T3

Legend:

Company M =  
Plan X =  
Amount A =  
IRA B =  
Company N =

Dear [REDACTED]:

This is in response to correspondence dated April 30, 2004, as supplemented by correspondence and communications dated September 28 and October 29, 2004, in which you requested 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:

In [REDACTED], you were informed that in compliance with the property settlement concerning your divorce from your former husband, his employer, Company M, would be making a required distribution to you from Plan X. This distribution would be pursuant to the requirements of a qualified domestic relations order.

In [REDACTED], Amount A, the required distribution, became available. Your intent was to have a direct rollover of Amount A into your existing Individual Retirement Arrangement (IRA), IRA B. The distribution of Amount A from Plan X was handled solely by your ex-husband, his accounting firm, his account representative at Company N and the original actuary of Plan X. Although all of the parties involved communicated with each other about the direct rollover of Amount A into IRA B, your former husband inadvertently or accidentally provided the account number of your non-IRA brokerage account held by Company N to the Plan X administrator. Due to this, on [REDACTED] [REDACTED] Amount A was transferred into your brokerage account with Company N instead of being directly rolled over into IRA B. Although you received monthly statements from

Company N, you were not aware that Plan X was the source of the funds which were transferred into your account with Company N. You became aware of this mistake when you received a Form 1099R from Company M in early [REDACTED]. At that time, you called your former husband and his accountant and found out that Amount A was distributed from Plan X and transferred to your account with Company N. You have not withdrawn any amounts from this account; Amount A is still invested in assets in the brokerage account with Company N.

Based on these facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code regarding Amount A.

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) of the Code provides that if—

(A) 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,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

(C) 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 so transferred) shall not be includible in gross income for the taxable year in which paid.

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 section 402(c)(1) shall not apply to any transfer made after the 60<sup>th</sup> day following the day on which the distributee received the property distributed.

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(e)(1)(A) of the Code provides, in pertinent part, that for purposes of section 402(a), an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order, as defined in section 414(p).

Section 402(e)(1)(B) of the Code provides that if any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order, within the meaning of section 414(p), section 402(c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

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), 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 you presented demonstrates that you communicated your intent to have Amount A directly rolled over into IRA B to the relevant parties involved with the distribution from Plan X. You relied upon these persons to properly effect a direct rollover of Amount A into IRA B. Instead, a miscommunication between your former husband and a representative of Company N resulted in Amount A being misdirected into a brokerage account with Company N instead of into IRA B.

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. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 402(c) 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.

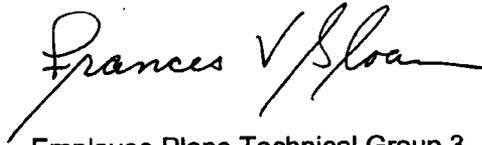
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

**200506030**

If you wish to inquire about this ruling, please contact  
correspondence to

. Please address all

Sincerely yours,



Frances V. Sloan

Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose