



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

200419032

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 12 2004

Uniform Issue List: 408.03-00

SE. ER. PA. T3

[REDACTED]

Legend:

Taxpayer A = [REDACTED]

Amount B = [REDACTED]

Amount C = [REDACTED]

Amount D = [REDACTED]

Company X = [REDACTED]

Company Y = [REDACTED]

Plan Z = [REDACTED]

Accountant P = [REDACTED]

Dear Mr. and Mrs. [REDACTED]

By letters dated October 27, 2003, and December 10, 2003, your authorized representative requested a waiver of the 60-day rollover requirement contained in section 402(C)(3)(A) 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 left employment with Company Y in early 2002. In April 2002 he requested that his retirement funds in various retirement programs, collectively Plan Z, at Company Y be distributed and directly rolled over to a self-directed rollover individual retirement account (IRA) account that he established at Company X.

The requested distributions from his qualified plan accounts, of Amounts B, C, and D, were completed in year 2002 in the following manner:

Taxpayer A had an online stock trading account with Company X at the time the rollover application was completed and he applied for the account on-line over the internet. Taxpayer A, after completing and submitting the application for distributions of Amounts B, C, and D, initiated the process of requesting his rollovers and had the funds

moved directly from the accounts into what he believed to be his IRA through a direct transfer. Taxpayer A has represented that the internet-based applications were not obviously identifiable as either IRA applications or non IRA applications, and when he applied for the account he simply clicked on the wrong button. He has also represented that once he was into the application process, there were no warnings or other obvious indications that he was setting up a taxable account rather than a tax-deferred account.

The funds distributed from Plan Z have never been in his possession. While Taxpayer A initiated some trading activity after the funds were placed in the self-directed account at Company X, no activity has been undertaken since the error was discovered, and Taxpayer A has not withdrawn any funds from this account. In addition, Taxpayer A had Accountant P treat this account as a rollover IRA account on his 2002 Federal tax return.

Accountant P first began doing work for Taxpayer A and his company well before he prepared his 2002 Federal tax return. At the time of Accountant P's initial consultation, Taxpayer A mentioned to Accountant P that a rollover had recently occurred. Taxpayer A described it as a rollover of funds from Company Y to Plan Z, a self-directed IRA.

In early 2003, Taxpayer A realized that Company X had not established a rollover IRA account but instead established a taxable account.

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

With respect to your request to waive the 60-day rollover requirement, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs. Code 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 60th day following the day on which the distributee received the property distributed.

Section 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a

direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401(a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections 401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

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.

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)(B), 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 by Taxpayer A demonstrates a mistake on the part of Taxpayer A resulting from his technical error in completing the wrong form over the internet when he was attempting to establish a rollover IRA. This error was not detected by either Taxpayer A or by Company X which compounded the mistake. Subsequently, Taxpayer A mentioned a rollover to Accountant P as something that had recently occurred. Thus the facts surrounding this request indicate that Taxpayer A mistakenly believed that the 60-day rollover requirement had been satisfied.

In this case, 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 distributions of Amounts B, C, and D. Taxpayer is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amounts B, C, and D to an IRA established and maintained in his name. Provided all other requirements of section 402(c)(1) 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)(1) of the Code.

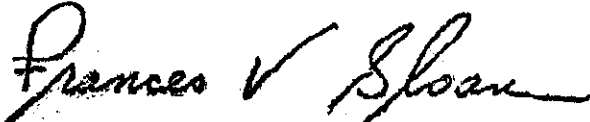
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 _____ at _____. Please address all correspondence to SE:T:EP:RA:T3.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

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