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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV 23 2004

*Uniform Issue List: 402.00-00*

*SE:TEP:RA:73*

**Legend:**

Bank A =

Amount D =

Amount E =

Amount F =

Plan X =

Dear

This is in response to a request submitted by you by letter dated August 31, 2004, for a ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated October 8, 2004, November 4, 2004, and November 8, 2004 supplemented the request.

You have submitted the following facts and representations:

Your former husband was a participant in Plan X. Pursuant to a domestic relations order regarding your marriage dissolution you are the alternate payee under Plan X. The order meets the requirements of a qualified domestic relations order set forth in section 206(d)(3) of the Employee Retirement Income Security Act of 1974 and section 414(p) of the Code. Amount E was distributed to you pursuant to the domestic relations order. Amount E represents Amount D (the

amount of the funds to which you were entitled from Plan X under the divorce decree) less approximately 30 percent withheld for income tax purposes. You received Amount D on June 21, 2004. You spoke with a representative from Bank A who told you that you had 90 days to roll over the amount distributed from Plan X. The 60 day period expired on August 20, 2004. On August 26, 2004, you again met with a representative from Bank A who then told you that you only had 60 days to effectuate the rollover and the 60 days had now passed.

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

Section 402(e)(1)(A) provides that, for purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of a 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 a participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if the alternate payee were the participant.

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 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 408(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) 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 by you demonstrates that you had intended to effectuate a roll over but that you were misinformed by a representative of Bank A as to the number of days you had to complete the rollover. Furthermore, it shows that you attempted to roll over Amount F into an IRA within the time frame indicated to you by the representative of Bank A. However, such attempt to roll over was outside the requisite 60-day period. The information presented indicates that the reason for the failure to comply with the 60-day requirement was erroneous information that you had received. Finally, this request for a letter ruling was submitted shortly after the 60-day period expired and you discovered that you failed to comply with the requirements of section 402(c) of the Code.

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 from Plan X. You are granted a period of 60 days from the issuance of this ruling letter to complete the rollover. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such distributions, the amount deposited into an IRA will be considered a rollover contribution within the meaning of section 402(c)

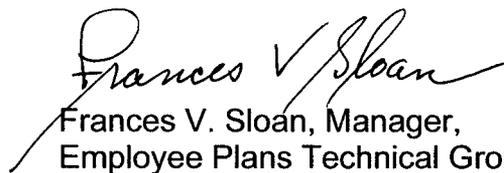
This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code

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