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

200427027

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR - 6 2004

Uniform Issue List: 408.03-00

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SE:T:EP:RA:T3

Legend:

Taxpayer A = * * *

Amount B = * * *

Plan D = * * *

Investment Advisor E= * * *

Tax Advisor F= * * *

Dear * * *:

This is in response to a request submitted on your behalf by your authorized representative by letter dated September 2, 2003, supplemented by letter dated March 25, 2004, for a ruling to waive 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 penalties of perjury to support the ruling request.

Taxpayer A was a participant in Plan D. Plan D is an employee retirement plan and trust qualified within the meaning of section 401(a) of the Code. On September 30, Taxpayer A requested and received a complete distribution from Plan D in the form of a check for Amount B (less 20% federal withholding). At that time and subsequent to the receipt of the check for the net distribution, Taxpayer A did not receive any written or oral correspondence regarding the rollover rules and/or tax consequences of his request for a complete distribution as required under section 402(f) of the Code.

On February 28, Taxpayer A spoke to Investment Advisor E who immediately informed Taxpayer A of the 60-day rollover rule. Investment Advisor E subsequently referred Taxpayer A to Tax Advisor F who created a request for a waiver from the 60-day rollover rule to the Internal Revenue Service. Taxpayer

A never cashed or rolled over Amount B into an individual retirement arrangement ("IRA") or other qualified plan and the 60-day rollover period has expired.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B, 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(a) of the Code provides that, except as otherwise provided in this section, any amount distributed to any distributee by an employees' trust described in section 401(a) of the Code which is exempt from tax under section 501(a) of the Code shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code (relating to annuities).

Section 402(c) of the Code (concerning rules applicable to rollovers from exempt trusts) provides, in part, that if any portion of the balance to the credit of an employee 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, 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)(8)(A) of the Code provides that a qualified trust means an employees' trust described in section 401(a) of the Code which is exempt from tax under section 501(a) of the Code. 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.

Section 402(c)(3)(A) of the Code provides, in short, that the transfer of a qualified plan distribution must be made within 60 days of receipt. Section 402(c)(3)(B) of the Code 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.

Section 402(f) of the Code requires the plan administrator to provide a written notice to recipients of distributions eligible for rollover treatment. This notice must explain the provisions under which the recipient may have the distribution directly transferred to another eligible retirement plan, must explain that the

withholding of tax on the distribution is required if it is not directly transferred to another eligible retirement plan, and must explain that the recipient will not be subject to tax if the distribution is transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

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) of the Code or 408(d)(3)(I) 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 Taxpayer A demonstrates that Taxpayer A never received sufficient notice of the 60-day rollover rule as required under section 402(f) of the Code. Taxpayer A could not reasonably be expected to satisfy the requirement that Amount B be deposited in an IRA or other qualified plan within 60 days of the distribution from Plan D as he was not aware of the requirement. As a result, the failure to deposit Amount B into an IRA or other qualified plan within the 60-day period was beyond the reasonable control of the Taxpayer.

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 B. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B to an IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, said contribution will be considered a rollover contribution within the meaning of section 402(c)(3) 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 ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

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

I.D. # * * *, at * * *. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Fran Sloan

Fran Sloan
Manager, Technical Group T3
Employee Plans

Enclosures: Deleted copy of this letter
Notice of Intention to Disclose, Notice 437

cc: * * *
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