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

200427029

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR - 7 2004

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

[redacted]

Legend:

Taxpayer A = [redacted]

Amount D = [redacted]

Savings Account E = [redacted]

Bank B = [redacted]

Company H = [redacted]

IRA X = [redacted]

Company W = [redacted]

Dear Mr. [redacted]

In a letter dated December 16, 2003, and March 18, 2004, you 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 was terminated from employment from Company H in September Company H told Taxpayer A that he would have to sell shares of Company H stock in the qualified plan which contained a Code section 401(k) arrangement maintained by

Company H back to Company H by June . because Taxpayer A was terminated and could not hold Company H's stock. Taxpayer A was also told that he had until the end of year to roll Amount D, the proceeds of the stock sale, over into a new Code section 401(k) program.

In June Taxpayer A placed Amount D into Savings Account E at Bank B. Taxpayer A asked Bank B if Taxpayer A needed to put Amount D into an eligible individual retirement arrangement(IRA) and was told that he would be taxed on the amount of the Company H plan distribution, but not any interest accrued, and that he should roll it over before the end of the year, into his new employer's Code section 401(k) plan.

Taxpayer A started new employment at Company W on September 1, Company W told Taxpayer A that he could not make a rollover into its 401(k) Program until the beginning of

At the beginning of January Taxpayer A was told by Company W that its 401(k) program would not accept the rollover of Amount D which Taxpayer A had maintained in Saving Account E because it was not in a qualified 401K or a Conduit IRA account. Company W suggested that Taxpayer A request a waiver of the 60-day rollover requirement for the original 401(k) plan dispersal that was in Savings Account E and transfer Amount D to a conduit IRA.

Taxpayer A transferred Amount D from the savings account to IRA X, a conduit IRA, on January 8,

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D from the qualified plan maintained by Company H and subsequently contributed to IRA X, a Conduit IRA which meets the requirements of Code section 408(a), because the failure to waive such requirement would be a hardship and against equity or good conscience.

With respect to your request to waive to 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 402(c)(6)(A) of the Code provides, in summary, that the transfer of an amount equal to any portion of the proceeds from the sale of property received in a distribution shall be treated as the transfer of property received in the distribution.

Section 402(c)(6)(B) of the Code provides, in summary, that the excess of fair market value on sale over its fair market value on distribution shall be treated as property received in the distribution.

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 an error caused by reliance on Company H and Company W. Taxpayer A followed the advice of Company H and Company W after stating his desire to accomplish a rollover of Amount D distributed from the 401(k) plan maintained by Company H into an new 401(k) plan at Company W. Adhering to the instructions of Company H and Company W caused the failure of Taxpayer A to complete a rollover of Amount D into Company W's qualified plan within the 60-day period prescribed by Code section 402(c)(3)(A).

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 D from Company H's qualified plan and its subsequent contribution to IRA X. The Service hereby deems such distribution and contribution to have met the 60-day rollover requirement. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, were met with respect to Amount D transactions, the transfer of Amount D from Company H's qualified plan into IRA X will be considered a rollover contribution 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 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 , I.D. at Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

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