INTERNAL REVENUE SERVICE

200427028

APR - 7 2004

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =

Taxpayer B =

Court E =

State Y =

Amount D =

Attorney G =

Plan A =

IRA X =

Dear

In a letter dated February 24, 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 divorced on May 29, A Qualified Domestic Relations Order (QDRO) was approved by Court E, State Y, the court having jurisdiction over the parties in divorce, and sent to Plan A. The order required that Amount D in Plan A, held in the account of Taxpayer B, her ex-husband, be paid to Taxpayer A.

Taxpayer A received Amount D, the amount required by the QDRO, less amounts withheld for Federal income tax purposes, as plan proceeds, on July 29, Taxpayer A had established individual retirement accounts (IRAs) in anticipation of receiving Amount D. However, when Taxpayer A received Amount D from Plan A, Taxpayer A questioned the withholding of funds from Amount D withheld by Plan A.

Taxpayer A consulted with Attorney G who advised Taxpayer A to send the Plan A check in the amount of Amount D to him for handling of the transaction. In early August, Taxpayer A did so.

Attorney G received and held the Plan A proceeds (Amount D), and did not return said Plan A proceeds to Taxpayer A until after the 60-day period provided by section 402(c)(3)(A) of the Code had elapsed.

Your submission contains a letter from Attorney G which, in part, indicates that Attorney G was not aware that the provisions of Plan A authorized the direct trustee-to-trustee transfer of a Plan A distribution to an IRA, which transfer would not have generated a 20% withholding for Federal income tax purposes.

On December 26, Taxpayer A established IRA X and deposited Amount D into IRA X.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the contribution of Amount D into IRA X 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).

Code 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)).

Code section 402(e)(1)(B) 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 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 the services of Attorney G. Taxpayer A believed that Attorney G was taking steps to accomplish a rollover into an IRA of Amount D distributed from Plan A. Attorney G failed to do so which resulted in Taxpayer A's failing to effect a rollover within 60 days.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the contribution of Amount D by Taxpayer A into IRA X. The Service hereby deems such contribution to be a timely rollover which satisfies the requirement of Code section 402(c)(3)(A). Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, were met with respect to the contribution of Amount D to IRA X, the contribution of Amount D by Taxpayer A into IRA X will be considered a rollover contribution within the meaning of section 402(c) of the Code.

This letter ruling assumes that the Court E order, referenced herein, constituted a qualified domestic relations order within the meaning of Code section 414(p) as represented.

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.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of Letter Ruling
Notice of Intention to Disclose