



But I Never Got That Letter—When Mail Doesn't Make It To Taxpayers  
April 22, 2006



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Last Monday newscasts across the country had live broadcasts from outside various post offices showing taxpayers mailing their tax returns at the last minute. This week, we'll consider not what happens when taxpayers send items to the government (something we've covered in a prior podcast) but rather two cases where tax related mail failed to make it to the taxpayer. And, in neither case was the United States Postal Service responsible for the failure of the document to reach the taxpayer—in both cases they faithfully delivered the document as addressed—the only problem was that the taxpayer wasn't at the location in question in either case.

In the first case, we look at the issue of a taxpayer who also changed addresses—but not voluntarily. In this case, we have a taxpayer who happened to be a guest of the state at a penal institution and was in the process of being transferred to another institution. The IRS Notice of Deficiency arrived at a facility the taxpayer did not arrive at until over two weeks after the letter arrived at the facility and the taxpayer claimed he was never given that letter.

In the second case, we look at a taxpayer who was a participant in an employer sponsored retirement program. The employer (or likely former employer) terminated the plan and paid out the account balances to the participants. Unfortunately, the 1099R and check

were sent to the wrong address.

## The Prisoner and the Notice of Deficiency

The case of *Thomas Butti v. Commissioner* involved the question of whether Mr. Butti, a convict housed in prison in New York, ever received the notice of deficiency. Mr. Butti claimed he did not, but the IRS felt that the following fact, cited in the opinion, made his testimony on this point less than compelling:

On August 18, 1994, he pleaded guilty to offering a false instrument for filing in the first degree, insurance fraud in the second degree, grand larceny in the second degree, and attempted grand larceny in the third degree.

The Tax Court, however, felt that in this case other factors indicated that this factor did not dispose of the question. The known facts regarding the document in question and its quest to reach Mr. Butti were summarized as follows by the Court:

Respondent sent Article No. Z 009 132 166 by certified mail to petitioner at the Gowanda Correctional Facility, P.O. Box 311, Gowanda, NY 14070 (Gowanda) and Article No. Z 009 132 167 by certified mail to petitioner at 47 Malverne Road, Scarsdale, NY 10583, on December 30, 1998. Respondent recorded the mailing on a U.S. Postal Service Form 3877, Acceptance of Registered, Insured, C.O.D. and Certified Mail, or its equivalent, a certified mail list, which stated at the top: "Statutory Notice of Deficiency for the years indicated have been sent to the following taxpayers". Gowanda received that item on January 4, 1999. Petitioner was not housed at Gowanda from October 22, 1998 to January 20, 1999.

Gowanda maintained a log for mail pertaining to inmates' legal proceedings. Petitioner signed that log in order to receive two items of certified mail on January 21, 1999. The log does not state the certified mail numbers of the items he received. Petitioner received various articles of certified mail from respondent while he was incarcerated at Gowanda.

The objective facts available are not conclusive as to whether or not Mr. Butti received the document in question—what is known could have occurred whether or not he received actual delivery.

However, luckily for Mr. Butti, he was no stranger to courtrooms and legal proceedings. As the Tax Court noted in a footnote reference:

Petitioner is litigious, frequently as the plaintiff or appellant. See, e.g., *Butti v. Goord*, 769 N.Y.S.2d 200 (2003); *People v. Butti*, 767 N.Y.S.2d 401 (2003); *People v. Butti*, 749 N.Y.S.2d 479 (2002); *Butti v. Goord*, 723 N.Y.S.2d 131 (2001); *Butti v. Goord*, 716 N.Y.S.2d 38 (2000); *People v. Butti*, 680 N.Y.S.2d

464 (1998); *U.S. Bank Trust Natl. Association Trustee v. Butti*, 792 N.Y.S.2d 505 (App. Div. 2005); *U.S. Bank Trust Natl. Association Trustee v. Butti*, 790 N.Y.S.2d 390 (App. Div. 2005); *Butti v. Goord*, 765 N.Y.S.2d 313 (App. Div. 2003); *People v. Butti*, 761 N.Y.S.2d 529 (App. Div. 2003); *Butti v. Goord*, 760 N.Y.S.2d 377 (App. Div. 2003); *State v. Butti*, 757 N.Y.S.2d 644 (App. Div. 2003); *Butti v. Goord*, 753 N.Y.S.2d 908 (App. Div. 2003); *People v. Butti*, 742 N.Y.S.2d 570 (App. Div. 2002); *Butti v. Goord*, 716 N.Y.S.2d 349 (App. Div. 2000); *Butti v. Goord*, 710 N.Y.S.2d 236 (App. Div. 2000); *People v. Butti*, 672 N.Y.S.2d 794 (App. Div. 1998); *Butti v. Angiolillo*, 664 N.Y.S.2d 947 (App. Div. 1997); *Butti v. Butti*, 543 N.Y.S.2d 94 (App. Div. 1989). Petitioner apparently vigorously asserted his rights in these cases and appealed every adverse ruling.

This external evidence lead the Court to come to the following conclusion about Mr. Butti's claim that he did not receive the document in question:

Petitioner testified that he did not receive the notice of deficiency. Respondent asks us to disregard petitioner's testimony because he has a criminal record. We disagree. Petitioner's habit is to aggressively assert his rights in dealings with the U.S. Government. It appears from his litigating history that he responds to notices as required to preserve his litigating rights. Respondent does not contend otherwise. We conclude that petitioner did not receive the notice of deficiency or have any other opportunity to dispute his underlying tax liability for 1989 or 1990.

This case serves to point out that on matters where the taxpayer's own statement is crucial to the matter being decided, it is important that the story “make sense” when compared with other evidence that suggests if the taxpayer's story is credible. In this case, a taxpayer whose “base” credibility may have been open to question was rescued by the fact that all other evidence available to the court either failed to suggest the taxpayer was lying about this fact or suggested that he was in fact telling the truth.

The result would likely have been very different had the taxpayer not had the long history of aggressively asserting his rights, even had he not had the conviction in his background. Asserting “I never got the document” is such a convenient excuse that skepticism is normal—it's similar to the old line about “the check is the mail” when a client is asked about the bill that's still outstanding.

As well, it was likley important that clearly Mr. Butti did not arrange his affairs to be conveniently “unavailable” while documents were coming to him—rather, the state of New York was handling his room and board issues for him.

Presuming that, in fact, Mr. Butti did not receive the letter, it also illustrates that actually being truthful makes the story hold up a lot better. A plausible reason why the story hung together so well is that it was the truth. Clients sometimes ask the question “how will the IRS know” to which the best reply is simply to assume they will.

## Retirement Plan Mail

Letter Ruling 200615031 deals with an issue of an employee who lost touch with an employer, an employer that had a retirement plan with an account for the employee. The facts of the situation were summarized as below in the ruling:

During calendar year \*\*\*\*\* Company V terminated Plan X. During said year, Company W sent a check in the amount of Amount D and an accompanying Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., to Taxpayer B at Address A. Taxpayer B asserts that she had not resided at Address A since calendar year \*\*\*\*\* and she also asserts that she never received said check. Company W eventually forwarded the full Amount D to the Internal Revenue Service ("Service") which was also provided a copy of the Form 1099-R relating to Taxpayer B's Plan X distribution. On or about Date 1, \*\*\*\*\* Taxpayers A and B were sent a CP2000 Notice relating to calendar year \*\*\*\*\* which asserted that they had failed to take Taxpayer B's calendar year \*\*\*\*\* Plan X distribution into income for After receipt of the CP 2000 Notice, Taxpayer B requested, and received, from the Service a copy of the above-referenced Form 1099-R. This request for an extension of the 60-day rollover period soon followed.

The IRS considered whether it could extend the rollover period per the provisions of §402(c)(3)(B), as the taxpayer claimed “the failure to waive such requirement would be a hardship and against equity or good conscience.”

The IRS ultimately agreed with the taxpayer on this point. Again, the taxpayer did not appear to be responsible for the failure of the check to reach her—and, clearly, couldn't rollover what she did not have. It's interesting to note that there may have been other options for the taxpayer aside from going the private letter ruling route, as it appears questionable whether she truly had a distribution until the IRS actually forwarded her the check. But clearly the PLR offered the “cleanest” option for solving this matter.

Advisers should remember that the IRS now has the right to waive the 60 day rollover period and should consider in special cases whether it might make sense to go for such a ruling. There have been a number of such rulings issued that should be reviewed.

## Internet Radio

And now for something a bit different. Since we've hit the end of tax season and it's time to relax a bit, I thought I'd share a few links to Internet radio stations that may be of interest if you have broadband connection. These stations stream audio over the Internet 24 hours a day.

If you grew up in Phoenix in the 60s and 70s and remember KCAC and when KDKB first came on the air, Radio Free Phoenix may be of interest to you—as it may be even if you

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just are interested in free form rock radio that looks back over the past few decades. They have both a high speed (128 bit) and a low speed (24 bit) feed and can be found on the web at <http://www.radiofreephoenix.com>.

A similar station, though without the Phoenix connection and who is less apt to play novelty, comic and “potentially inappropriate” music is Radio Paradise, on the web at [www.radioparadise.com](http://www.radioparadise.com).

If your interests go more towards classical music, I like the feed of a public radio station from North Carolina, found at [www.wcpe.org](http://www.wcpe.org) (hey, the name is great for CPAs anyway).

And if you prefer folk music, bluegrass, and the like, you may want to look into Kent, Ohio's [www.folkalley.com](http://www.folkalley.com).

All of these stations stream commercial free, though each one will ask for donations from listeners.

## **Thomas Butti v. Commissioner.**

TC Memo. 2006-66, April 5, 2006.

Thomas Butti, pro se; Kevin M. Murphy, for respondent.

### MEMORANDUM FINDINGS OF FACT AND OPINION

COLVIN, Judge: Respondent sent a Notice of Determination Concerning Collection Action(s) Under Section 63201 (Lien) and/or 6330 (Levy) to petitioner in which respondent determined that it was appropriate to sustain respondent's collection action with respect to petitioner's unpaid income taxes for 1989, 1990, and 1999.2

The parties dispute whether respondent provided petitioner an opportunity for a hearing as required by section 6330(b) and whether petitioner received a notice of deficiency for 1989, 1990, and 1999. We conclude that respondent did not provide petitioner an opportunity for a hearing and that petitioner did not receive the notice of deficiency. We will remand the case to respondent to provide an opportunity for a hearing as required by section 6330(b).

### FINDINGS OF FACT

Some of the facts have been stipulated and are so found.

#### A. Petitioner

Petitioner was incarcerated in the Wyoming Correctional Facility, Attica, New York, when the petition was filed. He lived in the State of New York before and after he was incarcerated.

Before he was incarcerated, petitioner was a licensed chiropractor practicing in Yonkers, New York. On August 18, 1994, he pleaded guilty to offering a false instrument for filing in the first degree, insurance fraud in the second degree, grand larceny in the second degree, and attempted grand larceny in the third degree.

#### B. The Notice of Deficiency for 1989 and 1990

Respondent sent Article No. Z 009 132 166 by certified mail to petitioner at the Gowanda Correctional Facility, P.O. Box 311, Gowanda, NY 14070 (Gowanda) and Article No. Z 009 132 167 by certified mail to petitioner at 47 Malverne Road, Scarsdale, NY 10583, on December 30, 1998. Respondent recorded the mailing on a U.S. Postal Service Form 3877, Acceptance of Registered, Insured, C.O.D. and Certified Mail, or its equivalent, a certified mail list, which stated at the top: "Statutory Notice of Deficiency for the years indicated have been sent to the following taxpayers". Gowanda received that item on January 4, 1999. Petitioner was not housed at Gowanda from October 22, 1998 to January 20, 1999.

Gowanda maintained a log for mail pertaining to inmates' legal proceedings. Petitioner signed that log in order to receive two items of certified mail on January 21, 1999. The

log does not state the certified mail numbers of the items he received. Petitioner received various articles of certified mail from respondent while he was incarcerated at Gowanda.

### C. The Section 6330 Hearing

Respondent issued a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing, on November 8, 2000. In the Final Notice, respondent stated that petitioner owed \$270,087.60 for 1989, \$108,044.26 for 1990, and \$5,507.84 for 1999.

On December 1, 2000, petitioner sent to respondent a Form 12153, Request for a Collection Due Process Hearing. Petitioner was incarcerated at the Wyoming Correctional Facility at that time. He attached an explanation in which he said he had not received the notice of deficiency and that he was not liable for tax in the amounts stated in the notice.

One of respondent's Appeals officers was assigned to petitioner's case on February 12, 2002. The Appeals officer kept an activity log for the case in which he said: (1) The case is very complex; (2) petitioner claims that he had no prior opportunity to contest the underlying liability and he did not receive the notice of deficiency; and (3) the "administrative file indicates that a defaulted \* \* \* [notice of deficiency] is in [the administrative] file".

On May 1, 2002, the Appeals officer sent a letter to petitioner at the Wyoming Correctional Facility stating in part:

We scheduled the conference you requested on this case for \* \* \* [9:30 a.m., May 21, 2002, at room 1137, 290 Broadway, New York, New York]. Please let me know within 10 days from the date of this letter whether this is convenient. If it is not, I will be glad to arrange another time.

Our meeting will be informal and you may present facts, arguments, and legal authority to support your position. If you plan to discuss new material, please send me copies at least five days before our meeting. You should prepare statements of fact as affidavits, or sign them under penalties of perjury. \* \* \*

The Appeals officer knew that petitioner was incarcerated when he sent that letter. On May 15, 2002, petitioner wrote the following to the Appeals officer:

I received your May 1, 2002, correspondence affixed hereto, and I respond accordingly. I was transferred to the facility listed below and \* \* \* Wyoming did not forward your correspondence expeditiously. Therefore, I apologize for the delayed response, but it is with just cause.

I commence by thanking you for scheduling a conference on this case. Unfortunately, I am faced with two challenges: (1) I am confined to solitary until July 16, 2002 and I do not have access to a telephone, legal documents, and/or transportation to even meet with you at this time. Furthermore and due to my indigency status as granted by both Federal and State courts, I am unable to retain an attorney, certified public accountant or person enrolled to practice before the Internal Revenue Service. I am currently petitioning a

professional willing to assist pro bono.

\* \* \* \* \*

I humbly request a moratorium until I can either (1) access my complete file post July 16, 2002, (2) obtain a pro bono accountant or attorney or, (3) complete my due process right to a full and fair opportunity to appeal my criminal case. \* \* \*.

Petitioner did not meet with the Appeals officer in New York on May 21, 2002. On that day, the Appeals officer wrote in his activity log that he had reviewed respondent's transcripts of account for petitioner's tax year 1989 and 1990, including Forms 4340, Certificates of Assessments, Payments, and Other Specified Matters, and concluded that respondent had followed proper administrative and procedural requirements.

The Appeals officer received and read petitioner's May 15, 2002, letter on May 22, 2002. Even though he told petitioner he would reschedule the hearing at petitioner's request, the Appeals officer did not do so. On June 4, 2002, respondent issued a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330. In it, respondent determined that respondent's collection action with respect to petitioner's tax years 1989-90 and 1999 was proper.

#### OPINION

##### A. Whether Respondent Provided Petitioner an Opportunity for a Hearing Under Section 6330(b)

Respondent contends that petitioner was given an opportunity to have a hearing in this case. We disagree. The Appeals officer invited petitioner to attend a hearing and said he would reschedule it if it were inconvenient for petitioner to attend. Petitioner timely requested that it be rescheduled.

As a result of telling petitioner he would reschedule the hearing at petitioner's request, and then not doing so, the Appeals officer denied petitioner the opportunity for a hearing on the issues petitioner had identified in his request for a hearing. The Appeals officer knew that petitioner had raised numerous issues, none of which the Appeals officer characterized as frivolous. We conclude that petitioner did not have an opportunity for a hearing as required by section 6330(b).

##### B. Whether Petitioner Received the Notice of Deficiency for 1989 and 1990

A taxpayer may challenge the existence or amount of the underlying tax liability if he or she did not receive a notice of deficiency or otherwise have an opportunity to dispute that tax liability. Sec. 6330(c)(2)(B); *Goza v. Commissioner* [Dec. 53,803, 114 T.C. 176, 180-181 (2000)].

Petitioner contends that he did not receive the notice of deficiency for 1989 and 1990 and that he is not liable for tax in the amount stated in the notice of determination.

Respondent points out that the Form 3877 states that respondent mailed a notice of

deficiency to petitioner, Gowanda records state that Gowanda received the item of mail listed in the Form 3877, and that petitioner signed for two articles of certified mail on January 21, 1999. Respondent contends, based on the presumption of official regularity, that petitioner received the notice of deficiency.

Petitioner testified that he did not receive the notice of deficiency. Respondent asks us to disregard petitioner's testimony because he has a criminal record. We disagree. Petitioner's habit is to aggressively assert his rights in dealings with the U.S. Government. It appears from his litigating history that he responds to notices as required to preserve his litigating rights.<sup>3</sup> Respondent does not contend otherwise. We conclude that petitioner did not receive the notice of deficiency or have any other opportunity to dispute his underlying tax liability for 1989 or 1990.

### C. Conclusion

In appropriate circumstances we may remand a case to the Appeals Office to provide a hearing under section 6330(b). See *Lunsford v. Commissioner*, [Dec. 54,553, 117 T.C. 183, 189 (2001)]; *Harrell v. Commissioner*, [Dec. 55,298(M), T.C. Memo. 2003-271]. We will remand this case with instructions to respondent to offer petitioner an opportunity for hearing under section 6330(b).

An appropriate order will be issued.

### FOOTNOTES

1 Section references are to the Internal Revenue Code as amended and in effect for the years in issue.

2 Petitioner's tax liability for 1999 is no longer at issue.

3 Petitioner is litigious, frequently as the plaintiff or appellant. See, e.g., *Butti v. Goord*, 769 N.Y.S.2d 200 (2003); *People v. Butti*, 767 N.Y.S.2d 401 (2003); *People v. Butti*, 749 N.Y.S.2d 479 (2002); *Butti v. Goord*, 723 N.Y.S.2d 131 (2001); *Butti v. Goord*, 716 N.Y.S.2d 38 (2000); *People v. Butti*, 680 N.Y.S.2d 464 (1998); *U.S. Bank Trust Natl. Association Trustee v. Butti*, 792 N.Y.S.2d 505 (App. Div. 2005); *U.S. Bank Trust Natl. Association Trustee v. Butti*, 790 N.Y.S.2d 390 (App. Div. 2005); *Butti v. Goord*, 765 N.Y.S.2d 313 (App. Div. 2003); *People v. Butti*, 761 N.Y.S.2d 529 (App. Div. 2003); *Butti v. Goord*, 760 N.Y.S.2d 377 (App. Div. 2003); *State v. Butti*, 757 N.Y.S.2d 644 (App. Div. 2003); *Butti v. Goord*, 753 N.Y.S.2d 908 (App. Div. 2003); *People v. Butti*, 742 N.Y.S.2d 570 (App. Div. 2002); *Butti v. Goord*, 716 N.Y.S.2d 349 (App. Div. 2000); *Butti v. Goord*, 710 N.Y.S.2d 236 (App. Div. 2000); *People v. Butti*, 672 N.Y.S.2d 794 (App. Div. 1998); *Butti v. Angiolillo*, 664 N.Y.S.2d 947 (App. Div. 1997); *Butti v. Butti*, 543 N.Y.S.2d 94 (App. Div. 1989). Petitioner apparently vigorously asserted his rights in these cases and appealed every adverse ruling.

Petitioner also has tenaciously asserted his rights in this case. If he received the notice of deficiency, as respondent asserts, we believe he would have taken action to challenge it.

## **IRS Letter Ruling 200615031**

LTR Report Number 1520, April 19, 2006 IRS REF: Symbol: SE:T:EP:RA:T3

January 18, 2006

This is in response to your letter dated \*\*\*\*\*, as supplemented on \*\*\*\*\*, \*\*\*\*\* in which you request 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 is married to Taxpayer B. Neither Taxpayer A nor Taxpayer B has attained age 70 1/2. Taxpayer B formerly participated in Plan X which was sponsored by Company V. Company W was the custodian of Plan X.

During calendar year \*\*\*\*\* Company V terminated Plan X. During said year, Company W sent a check in the amount of Amount D and an accompanying Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., to Taxpayer B at Address A. Taxpayer B asserts that she had not resided at Address A since calendar year \*\*\*\*\* and she also asserts that she never received said check. Company W eventually forwarded the full Amount D to the Internal Revenue Service ("Service") which was also provided a copy of the Form 1099-R relating to Taxpayer B's Plan X distribution. On or about Date 1, \*\*\*\*\* Taxpayers A and B were sent a CP2000 Notice relating to calendar year \*\*\*\*\* which asserted that they had failed to take Taxpayer B's calendar year \*\*\*\*\* Plan X distribution into income for After receipt of the CP 2000 Notice, Taxpayer B requested, and received, from the Service a copy of the above-referenced Form 1099-R. This request for an extension of the 60-day rollover period soon followed.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D 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) (which excludes rolled over amounts from gross income) 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.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

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).

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 and documentation submitted by Taxpayer B asserts that her failure to accomplish a timely rollover was caused by her not receiving either the check for Amount D or the accompanying Form 1099-R until she was notified by the Service

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that it had been sent the entire Plan X distribution due her, totaling Amount D, by Company W.

Thus, based on the above, the Service hereby waives the 60-day rollover period found in Code section 402(c)(3)(A) with respect to Amount D distributed from Plan X during calendar year

As a result, Taxpayer A is granted a period not to exceed 60 days as measured from the date of this ruling letter to roll over an amount not to exceed Amount D into one or more IRAs described in Code section 408(a) set up and maintained in her name.

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.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to your authorized representatives.

If you wish to inquire about this ruling, please contact \*\*\*\*\*, Esq. (I.D. # \*\*\*\*\*) at \*\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours, Frances V. Sloan, Manager, Employee Plans Technical Group 3.