

200430039



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 408.03-00

APR 30 2004

Legend:

| | |
|------------|---|
| Taxpayer A | = |
| Taxpayer B | = |
| Company C | = |
| Amount D | = |
| Amount E | = |
| Amount F | = |
| Amount G | = |
| Amount H | = |
| Account V | = |
| IRA W | = |
| IRA X | = |
| IRA Y | = |
| IRA Z | = |

Dear

This is in response to a ruling request submitted by you on ***** in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

Taxpayer A had two individual retirement accounts with Company C, IRA W and IRA X. Taxpayer B also had two IRAs, IRA Y and IRA Z, with Company C. In addition, Account V was maintained for the benefit of Taxpayer B in a former employer's 401(k) plan. On ***** Taxpayer B received distributions of

Amount E from IRA Z and Amount F from Account V. On ***** Taxpayer B received a distribution of Amount D from IRA Y. On ***** Taxpayer A received a distribution of Amount G from IRA W, and a distribution of Amount H from IRA X. Less than a week after the above distributions, the mother of Taxpayer A became very ill, was diagnosed with _____ hospitalized for surgery on *****. A short time later Taxpayer A's mother was released from the hospital. Although her condition was stabilized, she remained in critical condition. Taxpayer A cared for her mother in a hospice care facility until her mother's death on *****. In addition, during this time Taxpayer A and Taxpayer B also cared for Taxpayer A's father who was devastated by the loss of his wife, and Taxpayer B cared for their two small children and also managed the family business that Taxpayers A and B previously managed together. Due to the sudden and unexpected illness and subsequent death of the mother of Taxpayer A, and the confusion and trauma her family suffered during this time, Taxpayers A and B were unable to complete the rollovers as they intended within the required period. The funds received in the distributions have been maintained in a savings account pending this ruling request.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distributions described in this request because the failure to waive such requirement would be against equity or good conscience.

Section 402(a) of the Internal Revenue Code provides, in general, that any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Section 402(c) of the Code provides rules applicable to rollovers from exempt trusts. In general, section 402(c)(1) provides that if an eligible rollover distribution is transferred to an eligible retirement plan, such as an IRA or a qualified trust, the distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(4) of the Code provides that the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust except that such term shall not include

- (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made-
 - (i) for the life (or life expectancy) of the employee or the joint lives (or life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a period of ten years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon the hardship of the employee.

Section 402(c)(3)(A) of the Code requires that an eligible rollover distribution from a qualified retirement plan must be transferred to an eligible retirement plan no later than the 60th day after the day of receipt in order to avoid having to include that distribution in the distributee's gross income for that year.

Section 402(c)(8) of the Code provides, in part, that an eligible retirement plan includes an IRA, a qualified section 401(a) trust, and certain other designated plans.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) where the failure to waive such requirement would be against equity or good conscience.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) the entire amount received (including money or any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money or any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (D) 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 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), 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 the taxpayers indicates that the confusion caused by the illness and death in the family resulted in the transactions not being carried out in accordance with the taxpayers' intent.

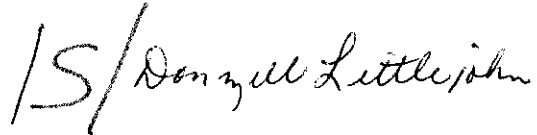
Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the part of Amount F that constitutes an eligible rollover distribution pursuant to section 402(c)(4) of the Code. An eligible rollover distribution can consist only of pre-tax amounts and earnings and does not include after-tax contributions or distributions required by section 401(a)(9) of the Code. Furthermore, the Service waives the 60-day rollover requirement in section 408(d)(3)(I) with respect to the distribution of Amounts D, E, G, and H. Taxpayers A and B are hereby granted a period of 60 days from the issuance of this ruling letter to contribute Amounts D, E, G, and H, in cash, into one or more IRAs, or in the case of the part of Amount F that constitutes an eligible rollover distribution, into either one or more IRAs or into an eligible retirement plan as defined in section 402(c)(8) of the Code. Provided all other requirements of sections 402(c) and 408(d)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of sections 402(c) and 408(d)(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 that may be applicable hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact
at

Sincerely yours,

A handwritten signature in cursive script, reading "15/Donzell Littlejohn". The signature is written in dark ink on a white background.

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter