



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200443040

U.I.L. 402.08-00

JUL 29 2004

SE.T:EP:PA:T2

Legend:

Taxpayer A =

Bank B =

Company F =

Amount D =

Account C =

Dear :

This is in response to your letter dated March 26, 2004, as supplemented by correspondence dated July 21, 2004, in which you request a waiver of the 60-day rollover requirement contained in 402(c)(3)(A) of the Internal Revenue Code (the "Code").

The following facts and circumstance have been submitted under penalties of perjury in support of the ruling request:

In February Taxpayer A's employer discontinued its Code section 401(k) plan and requested the participants to instruct it as to where they desired to have their account balances distributed. Taxpayer A states that she contacted Bank B, and Bank B agreed to accept her plan account balance as a rollover contribution. Taxpayer A states that she informed her employer that she wanted to make a direct rollover of her plan account balance into an individual retirement arrangement (IRA) at Bank B.

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A check dated February _____ in the amount of Amount D was issued by Company F and made payable to Bank B for the benefit of Taxpayer A. A representative of Bank B called Taxpayer A and informed her that the check in the amount of Amount D had been received by Bank B and asked Taxpayer A what she intended to do with the check. Taxpayer A asserts that her understanding was that Bank B was asking about the type of investment of Amount D and she asked the Bank B representative if she could put the money into general savings until she made a decision with respect to investment options. Taxpayer A asserts that the Bank B representative informed her that depositing Amount D into a savings account would be sufficient. Taxpayer A endorsed the check and it was deposited into Account C on March _____ as supported by the account statement submitted with this ruling request.

In March _____ Taxpayer A was informed by her accountant that Account C was not an IRA and that Amount D did not constitute a rollover contribution because it had not been rolled over to an IRA within 60 days. Taxpayer A asserts that up until this time she was not aware that Amount D was not in an IRA and assumed that a rollover had been completed in accordance with her instructions to her employer. Taxpayer A asserts that she has never used Amount D since it has been in Account C and has submitted a recent account statement supporting this assertion. Further, Taxpayer A states that it has been her intention from the beginning of this process to preserve Amount D as part of her retirement savings.

Based on these facts and representations you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D.

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) of the Code 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 governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, 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)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) defines "eligible rollover distribution" as any distribution to the employee of all or a 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 joint life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a specified period of 10 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 hardship of the employee.

Code section 402(c)(8) defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides that section 402(c)(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 rollover 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 distributions that occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a wavier of the 60-day rollover requirement pursuant to section 402(c)(3) of

the Code, the Service will consider all relevant facts and circumstance, 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.

Documentation submitted in this case indicates that a check in the amount of Amount D was issued by Company F on February and made payable to Bank B for the benefit of Taxpayer A. Taxpayer A deposited Amount D into Account C on March , as supported by the account statement submitted with this request for a ruling. Taxpayer A thought that Amount D had been rolled over to an IRA as requested. Taxpayer A asserts that she has never used Amount D since it has been in Account C and that it has been her intention since her employer terminated its section 401(k) plan to preserve Amount D for her retirement savings. Further, Taxpayer A submitted a recent account statement for Account C to support that Amount D continues to be held in Account C.

Therefore, assuming that the distribution of Amount D qualifies as an eligible rollover distribution under Code section 402(c)(4), pursuant to section 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from Taxpayer A's employer's Code section 401(k) plan. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to an IRA. Provided all other requirements of section 402(c)(1) of the Code , except the 60-day requirement, are met with respect to the contribution, this amount will be considered a rollover contribution within the meaning of section 402(c)(1).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 assumes that Taxpayer A's employer Code section 401(k) plan satisfied the requirements of Code section 401(a) at all times relevant to this transaction.

No opinion is expressed as whether the distribution of Amount D qualifies as an eligible rollover distribution under Code section 402(c)(4).

This letter is directed only to the taxpayer who requested it. Section 6110(k)(2) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact
SE:T:EP:RA:T2,

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2