INTERNAL REVENUE SERVICE

200445042

Uniform Issue List: 408.03-00

AUG 10 2004

SE:T:EP:RA:T4

Legend:

Taxpayer A=

Amount B=

Amount C=

Account D=

Plan E=

Bank F=

Company G=

Date M=

Dear :

This is in response to your letter dated , in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) 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 a retiree who received Amount B from Plan E, on Date M, as a lump sum retirement distribution. Amount B was deposited in an account that Taxpayer A had with Bank F.

During August , Taxpayer A met with an investment broker of Company G to discuss investment options of Amount B. Taxpayer A, as instructed by the broker, gave a personal check of Amount C to the broker for an investment that Taxpayer A believed was an IRA. Instead, Amount C was invested in Account D.

When Taxpayer A was preparing her income taxes, she learned that an investment of Amount C was not made into an IRA. Taxpayer A relied on the broker to correctly execute her instructions and deposit Amount B into an IRA.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Amount B.

Section 402(a) 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) 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 of the Code.

Section 402(c) of the Code defines and provides the rules applicable to rollovers from exempt trusts.

> Section 402(c)(1) of the Code provides that if ——
>
> (A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,
>
> (B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and
>
> (C) 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)(3) of the Code provides that the transfer must be made within 60 days of receipt. In general, section 402(c)(3)(A) provides that section 402(c)(1) shall not apply to any transfer 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.

Rev. Proc. 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 402(c)(3), 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 that during the conversation about her investment options a misunderstanding occurred between Taxpayer A and the investment broker of Company G. Her inexperience in this type of financial transaction and her trust in the investment advice of the broker of Company G prevented Taxpayer A from depositing Amount B into an IRA 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 Amount B. Taxpayer A is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amount B in cash into an IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met Amount B will be considered a rollover contribution within the meaning of section 402(c)(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 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 .

Sincerely yours,

/s/

, Manager
Employee Plans Technical Group 4

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