



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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OCT 07 2004

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UIL No.: 402.08-00

Legend

Taxpayer A =
Amount A =
Amount B =
Amount C =
Amount D =
Bank N =
Company O =
Plan X =
Account A =
Fund A =

Dear :

This is in response to a ruling request dated March 30, 2004, as supplemented by a letter dated June 28, 2004 in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

In a letter dated August 23, 2004, Taxpayer A was informed by Plan X's administrator that effective January [REDACTED], Plan X's rules provide that participants with a market value less than \$ [REDACTED] must take a complete distribution of their account balance. The letter further stated that since Taxpayer A's account balance is less than \$ [REDACTED] a complete distribution will be made. Taxpayer A completed a withdrawal/distribution form for Plan X and received her account balance from Plan X in the form of a stock certificate (Amount A) and a check for a partial share (Amount B) for a total distribution of Amount C on January [REDACTED].

Prior to the expiration of the 60-day rollover period allowed to rollover the distribution from Plan X to an Individual Retirement Arrangement (IRA), Taxpayer A requested Bank N to deposit the certificate of stock into an IRA. Bank N referred Taxpayer A to its on-site broker, Company O to set up the IRA. On March [REDACTED], Company O converted the certificate of stock into cash by depositing the certificate into Account A for Taxpayer A. After commissions and fees Account A's balance was Amount D.

Again, Taxpayer A instructed Company O to put the assets of Account A into an IRA. A statement from Company O shows the purchase of Fund A for Amount D. After receiving Form 1099B, Taxpayer A contacted Bank N, and was informed that Company O had improperly set up her IRA Account. Taxpayer A represents that it was her belief that Fund A was an IRA, but later discovered that Fund A is merely an Individual Account.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution from Plan X.

Section 402(c)(3)(A) of the Internal Revenue Code provides, in general, that any amount distributed from a qualified trust must be transferred to an eligible retirement plan no later than the 60th day following the day of receipt in order to avoid inclusion in the distributee's gross income.

Section 402(c)(8)(B) of the Code, provides that the term eligible retirement plan means (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b), (iii) a qualified trust, and (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b). If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

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.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides guidance on applying to the Internal Revenue Service for a waiver of the 60-day rollover requirement contained in Code section 402(c)(3). The Procedure states that in determining whether to grant a waiver of the 60-day rollover requirement, 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 due to reliance on advice from financial institutions and Company O's failure to establish an IRA to receive Taxpayer A's distribution from Plan X as directed, Taxpayer A did not satisfy the requirement that Amount C be deposited in an IRA within 60 days of the distribution from Plan X. The failure to deposit Amount C into a Rollover IRA within the 60-day period was beyond the reasonable control of Taxpayer A.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the portion of Amount C that constitutes an eligible rollover distribution pursuant to section 402(c)(4). You are granted a period of 60 days from the issuance of this ruling letter to contribute the portion of Amount C that constitutes an eligible rollover distribution into one or more IRAs. Provided all other requirements of section 402(c), except the 60-day requirement, are met with respect to such contribution, the amount of the contribution will be considered a rollover contribution within the meaning of section 402(c).

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 Income Tax Regulations thereunder which may be applicable.

This letter is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If have any questions, please contact...

Sincerely,

(signed) Carlton H. Watkins

....., Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437