

200507019



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 29 2004

U.I.L. 402.08-00

SE.T:EP:PA:T2

Legend:

Taxpayer A	= *****
Taxpayer B	= *****
Plan X	= *****
Employer M	= *****
Amount D	= *****
Amount E	= *****
Account J	= *****
Bank B	= *****
Amount F	= *****
Account K	= *****
Company P	= *****
Amount L	= *****
Amount N	= *****
IRA X	= *****

Dear *****:

This is in response to your letter dated September 15, 2004, as supplemented by correspondence dated October 19, 2004, November 9, 2004, and November 10, 2004, submitted on your behalf by your authorized representative, 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 penalties of perjury in support of the ruling requested.

Taxpayer A, prior to [REDACTED] retirement on February 27, 2003, was a participant in Plan X, a retirement plan sponsored by Employer M. On April 1, 2003, Taxpayer A elected to receive a single sum distribution of his accrued benefit from Plan X. In conjunction with the receipt of the lump sum distribution, Taxpayer A states that [REDACTED] signed documents acknowledging [REDACTED] understanding of the rules and requirements regarding the distribution from Plan X. Taxpayer A was also provided information explaining the 60-day rollover period. Taxpayer A received a distribution from Plan X on April 11, 2003 in the amount of Amount E (Amount D less Federal withholdings).

Taxpayer A submitted documentation with this request that indicates that on April 15, 2003, Amount E was deposited into Account J, a checking account Taxpayer A maintains with Bank B. Documentation submitted by Taxpayer A further indicates that on June 19, 2003, [REDACTED] withdrew Amount F from Account J and deposited it into Account K, an investment account Taxpayer A maintains with Taxpayer B, [REDACTED] spouse, with Company P.

In April 2004, Taxpayer A asserts that while having his 2003 tax return prepared [REDACTED] discovered that [REDACTED] had not rolled Amount E over to an IRA. Taxpayer A had a stroke in March 2003 (prior to receiving the distribution from Plan X) that affected [REDACTED] cognitive memory, mental stability, and balance for a number of months. Taxpayer A asserts that as soon as [REDACTED] realized that [REDACTED] had not completed a rollover within the 60 day time period, on May 28, 2004, [REDACTED] transferred Amount L from Account J to Account K. On June 4, 2004, Taxpayer A established IRA X with Company P and transferred Amount N (Amount F plus Amount L) from Account K to IRA X.

In support of [REDACTED] request for a ruling, Taxpayer A submitted account statements and documentation as evidence of the various transfers and the IRA application [REDACTED] completed on June 4, 2004 establishing IRA X with a deposit of Amount N. Amount N is approximately one-fourth (1/4) of the single sum distribution that Taxpayer A received from Plan X.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount N from Plan X.

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, in the manner provided 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.

Code section 402(c)(1) 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 property distributed, 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) of the Code defines "eligible rollover distribution" as any distribution to any employee of all or a portion of the balance to the credit of an 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 the 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, generally, 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.

Code section 402(c)(3)(B) provides that the Secretary may waive the 60-day 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).

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 402(c)(3)(B) of the Code, 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.

In this case, documentation submitted by Taxpayer A indicates that a distribution in the amount of Amount E was made to [REDACTED] in April 2003. Taxpayer A, due to health reasons, failed to make a tax-free rollover to another retirement plan within the 60-day rollover period. Taxpayer A asserts that when [REDACTED] discovered in April 2004 that [REDACTED] had missed the 60-day rollover period [REDACTED] transferred Amount L from Account J to Account K at Company P; and on June 4, 2004, transferred Amount N (Amount F plus Amount L) from Account K to IRA X, a rollover IRA [REDACTED] established with Company P. Documentation submitted by Taxpayer A with this request for a ruling indicates that Amount N remains in IRA X.

Therefore, assuming that the distribution of Amount N qualifies as an eligible rollover distribution under Code section 402(c)(4), pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount N from Plan X. On June 4, 2004, Taxpayer A established IRA X, a rollover IRA, with Company P and transferred Amount N to IRA X. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to

such contribution, we conclude that the 60-day rollover requirement is waived and Amount N will be considered valid rollover contribution within the meaning of Code section 402(c)(1).

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code.

This letter assumes that Plan X satisfies the requirements for qualification under Code section 401(a) at all times relevant to this transaction. This ruling further assumes that IRA X meets the requirements of Code section 408(a) at all times relevant to this transaction.

No opinion is expressed as to whether the distribution from Plan X qualify as an eligible rollover distribution under Code section 402(c)(4).

This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

If you have any questions regarding this letter, please contact

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose