



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List 402.08-00

200512029

DEC 27 2004

SE.T:EP:RA:T1

Legend:

Plan A

Amount 1

Amount 2

Bank M

Company O

Company P

Dear:

This letter is in response to a ruling request dated March 1, 2004, as supplemented by letters dated October 22, and November 16, 2004, in which you request 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:

You are a terminated employee of Company O, and participated in Plan A. On March 7, 2003, you made a written request for a direct rollover of your entire account balance in

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M. However, it was determined that Bank M could not accept Amount 2 as a rollover contribution. Bank M assisted you in setting up a brokerage account with Company P to accept Amount 2 as a rollover contribution. However, in preparing the application to set up the account, Company P misunderstood and, the brokerage account was established as an individual account.

You did not discover that the brokerage account was not an IRA account until you received Form 1099-DIV from Company P.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement contained in Code section 402(c)(3) with respect to the distribution of Amount 2.

Code section 402(c)(3)(A) 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.

Code section 402(c)(8)(B) 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.

Code section 402(c)(3)(B) 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.

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The information presented demonstrates that you attempted to execute a direct rollover of the distribution of your account balance from Plan A into an IRA. However, due to an error on the application prepared by Bank M, Amount 2 was transferred to an individual account instead of an IRA.

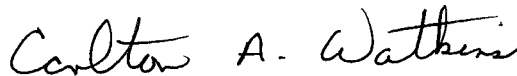
Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 2. You are granted a period of 60 days from the issuance of this letter ruling to transfer Amount 2 into one or more IRAs. Provided all other requirements of section 402(c), except the 60-day requirement, are met with respect to such transfer, the amount of the contribution will be considered a rollover contribution within the meaning of section 402(c) and not includible in gross income.

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 you have any questions, please contact [REDACTED]
[REDACTED]

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437