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COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

MAR 14 2005

Uniform Issue List: 408.03-00

*SE: T: EP: RA: T3*

Legend:

Taxpayer A =  
Taxpayer B =  
Company C =  
Amount D =  
Amount E =  
Hospital Q =  
Hospital U =  
Hospital K =  
City L =

Dear [REDACTED]

In letters dated July 19, 2004, October 27, 2004, and January 13, 2005, your authorized representative requested 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 penalty of perjury in support of the ruling requested:

Taxpayer A, an employee of Company C, accumulated Amount D in Company C's retirement plan, a plan qualified under Code section 401(a). You represent that Taxpayer A's decision making ability was impaired due to brain tumors. His medical condition is terminal. As a consequence of said impairment, Taxpayer A requested a complete withdrawal of his benefits in Company C's plan in one lump sum. Company C issued a check in Amount E on December 2, 2003, which represented the net amount of the distribution after federal and state income tax withholding. Amount E reflected withholding for Federal and State income taxes. Taxpayer A never cashed the check.

Due to Taxpayer A's severe physical and mental impairment, members of his family managed his financial affairs during this period. Taxpayer B, the daughter of Taxpayer A and his attorney-in-fact, discovered the uncashed check in March 2004 while attending to Taxpayer A's tax affairs. Taxpayer B immediately sought tax advice and subsequently filed this ruling request.

Your authorized representative has made the following representations concerning Taxpayer A's health:

1. On or about November 6, 2003, Taxpayer A suffered an onset of convulsive seizures. He was taken to Hospital Q in City L where he was diagnosed as suffering from multiple brain tumors.
2. On or about December 5, 2003, Taxpayer A entered Hospital U where a "Cat Scan" determined that one of his brain tumors was bleeding. As a result, Taxpayer A underwent immediate brain surgery. The brain surgery resulted in a finding of brain cancer.
3. On or about December 12, 2003, Taxpayer A was released to undergo radiation and chemotherapy treatment.
4. On or about March 11, 2004, Taxpayer A was admitted to the emergency room at Hospital Q where he underwent a MRI.
5. On or about April 19, 2004, a Radiation Oncologist determined that, based on his MRI, Taxpayer A had a very limited time to live.
6. On or about April 20, 2004, Taxpayer A was hospitalized at Hospital K as a result of brain seizures and swelling of the brain.
7. On or about April 26, 2004, Taxpayer A began receiving hospice care.
8. On or about November 27, 2004, Taxpayer A admitted to Hospital K as a result of brain seizures.
9. On or about December 1, 2004, Taxpayer A resumed receiving hospice care at home.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and against equity or good conscience.

With respect to your request to waive to 60 day rollover requirement, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that 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 of the Code (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 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401(a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections 401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (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 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B), 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 provided by the taxpayer's authorized representative demonstrates a failure on the part of Taxpayer A to satisfy the Code section 402(c) rollover requirements due to an inability to understand the nature of the transaction described above. This was a consequence of Taxpayer A's documented mental impairment resulting from life threatening brain tumors. Taxpayer A has made no attempt to cash the Amount E plan distribution check. Furthermore, members of his family have been handling his financial affairs for a number of months, and it was said family members, specifically Taxpayer B, who discovered that Taxpayer A had withdrawn Amount D from his qualified retirement plan and filed this request for a waiver of the 60-day rollover period on behalf of Taxpayer A.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, or any portion thereof, to an IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions within the meaning of section 402(c) of the Code.

Please note that this letter ruling does not authorize the rollover of the amount required to be distributed pursuant to Code section 401(a)(9), if any (see Code section 402(c)(4)(B)).

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 [REDACTED]  
[REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

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A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose