

200719015



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
FEB 16 2007

T: EP: RA: TY

Legend:

Taxpayer A =

Employer M =

Plan P =

Amount B = \$

Amount C = \$

Amount D = \$

Company E =

IRA X =

Dear :

This is in response to your request dated May 23, 2006, as supplemented by additional documents received on September 21, 2006, January 10, 2007, and February 2, 2007, in which you request a waiver of the 60-day rollover requirement contained in section 402(c) of the Internal Revenue Code ("Code").

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

Taxpayer A, age represents that on she received distributions totaling Amount B and Amount C from Plan P, an employee retirement plan, which is a qualified plan as described in section 401(a) of the Code, for services rendered to Employer M. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period contained in section 402(c)(3) of the Code was due to the failure of the financial planner of Company E to tell Taxpayer A of the impending rollover period at the time of their first meeting on

On prior to the expiration of the 60-day rollover period, Taxpayer A met with a financial planner of Company E to discuss various investment options. During that meeting, the financial planner failed to tell Taxpayer A that the 60-day rollover period would expire the next day, Saturday May 6, 2006. During the week-end of May 6 and 7, 2006, the financial planner realized that Taxpayer A's rollover period would end soon. On Monday, May 8, 2006, the financial planner informed Taxpayer A that she should rollover her funds as soon as possible. On Tuesday, May 9, 2006, three days after the 60-day rollover period expired, Taxpayer A immediately rolled over Amount D into IRA X, which is maintained in Taxpayer A's name.

Based on the facts and representations, Taxpayer A requested a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Amount D.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount distributed to any distributee by an 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)(1) of the Code provides that if 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, and the distributee 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 the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid.

Code section 402(b)(4) provides, in relevant part, that an "eligible rollover distribution" is a distribution to an employee of all or any portion of the balance to the credit of the 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 such 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)(B) defines an eligible retirement plan to include an individual retirement account described in section 408(a).

Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An IRA constitutes one form of an eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) 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)(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.

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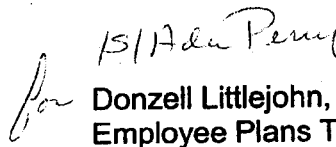
The information presented and documents submitted by Taxpayer A are consistent with her assertion that her failure to accomplish a timely rollover was caused by the failure of the financial planner of Company E to tell Taxpayer A of the impending rollover period at the time of their first meeting on May 5, 2006. In addition, once Taxpayer A was notified about the 60-day rollover requirement by a financial planner of Company E, Taxpayer A immediately took steps to accomplish the rollover with the result that the rollover was made within three days of the expiration of the 60-day period.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount D. Thus, Amount D, which was contributed to IRA X on May 9, 2006, will be considered a valid rollover under section 402(c)(3) of the Code.

This ruling 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 by others as precedent.

If you have any questions about this ruling, please contact _____, I.D. #
at ()

Sincerely yours,


Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437