

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

MAR 28 2007

Legend:

IRA Z =

This is in response your request dated [redacted] supplemented by letters dated [redacted] for a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code.

Revenue Code ("the Code"). The following facts and representations have been submitted in support of the ruling requested:

Taxpayer A, age **, represents that he received a distribution from Plan X totaling Amount G (minus withholding of Amount I). Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to his medical condition and hospitalization during the 60-day rollover period which led to Amount H (Amount G less Amount I) being placed into a non-IRA account. Taxpayer A represents that Amount H has not been used for any other purpose.

Taxpayer A was employed by Company B for a period of ** years and was a participant in Plan X. Taxpayer A was severely injured in a work-related accident while on the job on Date C. Taxpayer A sustained multiple serious injuries including heart stoppage, major head injury, a broken neck as well as other injuries in this accident. On Date D Taxpayer A returned to work after extensive treatment in the hospital, but chronic pain and other serious medical difficulties required him to leave work again to seek additional medical treatment. Taxpayer A was paid his normal salary until Date E when he began receiving workman's compensation benefits. Throughout this period of time Taxpayer A continued to suffer serious medical problems including several medical and hospital procedures involving treatment for kidney problems, depression, and chronic pain as a result of the injuries suffered in the accident.

After his severance from the service of Company B with continuing serious medical complications as a result of the work-related accident, Taxpayer A was advised by the administrator of Plan X concerning the distribution of his retirement benefits. Taxpayer A was confused due to the many medical (both physical and psychological) procedures he had been through and told the Plan X administrator to rollover his benefits in Plan X to IRA Y. Taxpayer A also had a savings account with Credit Union K. On Date F the plan administrator transferred Amount H, the balance of Taxpayer A's account with Plan X, (less Amount I that was withheld for federal income taxes) by direct electronic transfer to Taxpayer A's credit union savings account. During the two months after the distribution of Amount H, Taxpayer A underwent another series of medical procedures, including hospitalization, and was under emotional distress throughout the 60-day rollover period. Taxpayer A was unaware that the transfer of his plan benefits was made to his savings account until after the expiration of the 60-day rollover period. On Date J, nine days after the expiration of the 60-day period, Taxpayer A placed Amount H into IRA Z.

Based on the above facts and representations, you request that the Service waive the 60 day rollover requirement with respect to Amount G.

Section 402(c) 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. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of 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)(3)(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 occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing direct transfers of eligible rollover distributions.

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

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), 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 and documentation presented by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to his medical condition and hospitalization which resulted in Amount H being placed into a non-IRA account.

Therefore, 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 G. Provided all other requirements of section 402(c) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount G will be considered a rollover contribution within the meaning of section 402(c) of the Code.

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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 that may be applicable hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact

Sincerely yours,

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter