

200727025



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List 408.00-00

APR 13 2007

Legend:

Company A =

Company B =

Company C =

Individual J =

Individual K =

Individual L =

Date M =

Date N =

Date P =

Date Q =

Date R =

Date S =

Amount T =

Amount N =

Amount V =

Plan Y =

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Legend (continued)

Account A =

Account Z =

Dear:

This is in response to your request dated on February 9, 2007, submitted by your authorized representative, for a ruling to waive the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code"). Correspondence dated March 31, 2007, supplemented the request.

Under penalty of perjury, you have submitted the following facts and representations:

You are years old and represent that you received distributions from Plan Y totaling Amount N. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error made by Company A, which led to funds being placed into a non-IRA account. You wish to roll over a portion of Amount N (Amount V) and you represent that Amount V has remained in the non-IRA account and has not been used for any other purposes.

You participated in Plan Y, sponsored by Company B. On Date M, 2005, you terminated employment at Company B. On Date N, 2005, you received a distribution of Amount N from Plan Y. Amount N represented the total amount in your account (Amount T) less the amounts taken out for state and federal income taxes. On Date P, 2005, you discussed with Individual J, of Company A, the possibility of using Amount N to close on the purchase of a new home. She told you that Company A could handle the transaction, and she told you that you had 60 days from the date of distribution to rollover the distribution into an IRA. On Date Q, 2005, you deposited Amount V into a non-IRA account with Company A, pending the establishment of a rollover IRA.

On Date R, 2005, you met with Individual J and Individual K, of Company A, to establish the rollover account with the intention of depositing Amount V into an IRA. Date R, 2005, was within 60 days from the date of distribution from Plan Y. However, amount V was not deposited into an IRA, but was invested in a non IRA securities account with Company A (Account A). You were, at all times, under the impression that Account A was an IRA.

On Date S, 2006, you met with your tax consultant, Individual L, and realized at that time that Amount V was not placed in an IRA as you requested. You informed Company A of the error and have tried repeatedly to have the situation corrected. However, Company A has refused to correct the situation. On Date M, 2006, you removed your funds from Account A

and placed them in Account Z with Company C. You have submitted documentation to us which demonstrates your intention to place the funds in an IRA within the 60-day rollover period. Amount V remains available to be placed in a rollover IRA.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to Amount V contained in section 402(c)(3) of the Code in this instance.

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 sections 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.

Section 401(a)(31) 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.

Rev. Proc. 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) 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.

The information presented and documentation submitted by you is consistent with your assertion that your failure to accomplish a timely rollover was caused by an error on the part of Company A.

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 V from Plan Y. You are is granted a period of 60 days from the issuance of this ruling letter to contribute Amount V

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into an IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount V will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

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 (ID) at ()
Please address all correspondence to SE:T:EP:RA:T :T3

Sincerely yours,

Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

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