



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUN 08 2007

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Legend:

Taxpayer A	=
Taxpayer B	=
Employer M	=
Employer N	=
Plan X	=
Company R	=
Company V	=
Amount D	=
Account F	=

Dear :

This is in response to your letter dated , submitted on your behalf by your authorized representative in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code ("Code").

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

Taxpayer A was employed by Employer M, and on , became employed with Employer N. Employer M maintained Plan X, a Code section

401(k) plan in which Taxpayer A participated during his employment with Employer M. Company R is the custodian of Plan X.

Taxpayer A states that he wished that his Plan X account balance be rolled over into an individual retirement arrangement (IRA) with Company V. Taxpayer A further represents that with the consent of his spouse, Taxpayer B, he intended to establish an IRA with Company V for the purpose of receiving his distribution from Plan X. To this end, Taxpayer A states that he opened, via an online account creation tool, an account, Account F, with Company V. It is represented that although Taxpayer A believed that he had opened an IRA with Company V, he mistakenly, and without understanding, had opened a non-IRA account.

Taxpayer A states that on _____, he executed an election form for the purpose of withdrawing the balance of the assets in Plan X and transferring one hundred percent of the assets in Plan X into the account (Account F) with Company V. Documentation submitted by Taxpayer A shows that he completed Company R's election form checking the box for "IRA" and thereafter electing to have one hundred percent of his Plan X account balance transferred to Company V.

Taxpayer A represents that Company R issued a check, payable to Company V, to him in the amount of Amount D. Taxpayer A also represents that with the intention of effectuating a valid rollover of Amount D into an IRA at Company V, he mailed the check to Company V along with an IRA deposit slip. Taxpayer A further represents that he checked "Direct Rollover" on the deposit slip and write the account number for Account F in the memo field. Taxpayer A states that the entire balance of the check issued by Company R was deposited into Account F on _____.

Taxpayer A states that he was unaware that Amount D had not been placed into an IRA until he received a Form 1099-INT from Company V in _____. Taxpayer A states that upon receipt of such form, he immediately contacted Company V but because the 60-day rollover period had expired, Company V was unable to move the funds into an IRA. Taxpayer A states that Amount D remains invested in Account F and that although he has purchased stock with the funds, he has not withdrawn any amounts from Account F, believing that these funds were held in an IRA.

Taxpayer A states that Company V has represented that it did not receive a copy of his deposit slip and that it deposited the check in the account (Account F) Taxpayer A wrote on the check. It is represented that Taxpayer A does not possess the financial knowledge or experience to know that he was placing his Plan X assets in a non-IRA account and that if he had been aware that he was not effectuating a qualified IRA rollover into an IRA with Company V, he would not have performed the transaction. Taxpayer A states that because of _____

miscommunication and misunderstanding with Company V, Company V deposited Amount D into a non-IRA account.

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 from Plan X.

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) of the Code 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, in the manner provided under section 72 (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Code section 402(c)(1) provides, generally, that if any portion of an eligible rollover distribution from a qualified employees trust is paid to the employee in an eligible rollover distribution and the employee 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, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an 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 the 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) defines eligible retirement plan as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides, generally, that section 402(c)(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.

Code section 402(c)(3)(B) provides that the Secretary may waive the 60-day requirement under subparagraph (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 occur after _____, are eligible for the waiver under section 402(c)(3)(B).

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) 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.

In this case, Taxpayer A has not presented any evidence to the Service as to how any of the factors enumerated in Revenue Procedure 2003-16 affected his ability to timely roll over Amount D to an IRA. Further, there is no evidence to indicate that Company V personnel provided any information to Taxpayer A prior to or immediately after he established Account F. Based on the statements submitted, Taxpayer A contacted Company V approximately three months after Amount D had been deposited into Account F and only after receiving a Form 1099-INT. The information and representations submitted by Taxpayer A demonstrates that he is solely responsible for failing to timely deposit Amount D into an IRA.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution

of Amount D from Plan X, and thus Amount D will not be considered a valid rollover contribution under Code section 402(c)(1) because the 60-day rollover requirement was not satisfied.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a valid Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact
SE:T:EP:RA:T2.

Sincerely yours,

~~(signed)~~ **JOYCE E. FLOYD**

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose