



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 11 2007

Number: **200749017**
Release Date: 12/7/2007

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Legend:

Taxpayer A
Company B
Company C
Company D
Amount E
Amount F
Individual G
Date H
Date I
Date J
Plan X
Plan Y

Dear

This is in response to a ruling request submitted by your authorized representative on January 31, 2006, as supplemented by correspondence dated May 21, 2007, and August 6, 2007, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code. The following facts and representations have been submitted in support of your request.

Taxpayer A, age , represents that he received a distribution from Plan X totaling Amount E, and a distribution from Plan Y totaling Amount F. Taxpayer A asserts that his failure to accomplish a rollover of each distribution within the 60-day period prescribed by section 402(c)(3) was due to a mistake by Individual G of Company D which led to Amounts E and F being placed in a non-IRA account. Taxpayer A further represents that Amounts E and F have not been used for any other purpose.

On Date H, Taxpayer A took a distribution of Amount E from Plan X and invested such amount in Company D. On Date I, Taxpayer A took a distribution from Plan Y, and invested such amount in Company D. These transactions were made in the form of wire transfers directly to Individual G. Individual G is the managing member and majority owner of Company D. Taxpayer A asserts that Amounts E and F were intended to continue to be held for retirement purposes in Company D. Taxpayer A was informed by Individual G at the time of these transactions that Individual G would have the bank that acted as prime broker for Company D set up an IRA for Taxpayer A. Amounts E and F would then be invested in Company D and maintained as qualified IRA investments within such IRA. As a result of representations by Individual G, Taxpayer A assumed that Individual G would complete the necessary paperwork to establish such an IRA for Taxpayer A and that Amounts E and F would be held by such IRA and invested in Company D.

Documentation submitted by Taxpayer A demonstrates that both Taxpayer A and Company D believed that Amounts E and F were validly invested in an IRA. Since the transfers of Amounts E and F to Company D were all done by wire transfer, Taxpayer A never had direct access to these amounts. At the end of 2005, Individual G informed Taxpayer A, for the first time, that no IRA account had, in fact, been formally established for Taxpayer A, and therefore, Amounts E and F that were transferred to and invested in Company D were not maintained within an IRA.

In an affidavit dated Date J, Individual G acknowledged that he advised Taxpayer A that he would assist in establishing an IRA on behalf of Taxpayer A that would enable Taxpayer A to have his various retirement benefits invested in Company D. However, an IRA was never established to hold Amounts E and F as investments in Company D.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amounts E and F, respectively, from Plan X and Plan Y.

Section 402(c) of the Internal Revenue 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) 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).

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

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 presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish timely rollovers was caused by a mistake made by Individual G of Company D, which led to Amounts E and F being placed into a non-IRA account. The information presented by Taxpayer A is consistent with his assertion that he attempted to rollover Amounts E and F.

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 Amounts E and F, respectively, from Plan X and Plan Y. Provided all other requirements of section 402(c) of the Code, except the 60-day rollover requirement, are met with respect to such contributions, Taxpayer A is hereby granted a period of 60-days in which to deposit Amounts E and F into a rollover IRA, and Amounts E and F will be considered rollover contributions within the meaning of section 402(c) 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 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.

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

If you have any questions regarding this ruling, you may contact
ID # , at

Sincerely yours,



, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter