



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200904030

Uniform Issue List: 402.08-00

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OCT 30 2008

Legend:

T:EP:RA:T2

Taxpayer A	=	XXXXXXXXXXXXX
Plan X	=	XXXXXXXXXXXXX
Account M	=	XXXXXXXXXXXXX XXXXXXXXXXXXX
Amount D	=	XXXXXXXXXXXXX
Amount E	=	XXXXXXXXXXXXX
Amount F	=	XXXXXXXXXXXXX
Bank S	=	XXXXXXXXXXXXX
Individual H	=	XXXXXXXXXXXXX
Individual G	=	XXXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXXX
Date 3	=	XXXXXXXXXXXXX

Dear

This is in response to request dated July 31, 2007, as supplemented by correspondence dated August 6, October 24, November 2, and December 10, 2007, submitted on your behalf by your authorized representative requesting a waiver the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the "Code").

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

Taxpayer A, under age 70 1/2, represents that he received a distribution in the amount of Amount E from Plan X, a qualified retirement plan. Taxpayer A asserts that his failure to accomplish a rollover of Amount D within the 60-day rollover period prescribed by section 402(c)(3) of the Code was due to the failure of Individual H, a branch manager of Bank S, to follow Taxpayer A's instructions, to place the distribution in an Individual Retirement Arrangement ("IRA"). Instead, Amount D was placed into Account M, a non-IRA money market account.

Taxpayer A asserts that on Date 1, a check in the amount of Amount E was issued to him by Plan X; and on Date 2, he presented the check to Individual H, a

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branch manager of Bank S. Taxpayer A asserts further that he informed Individual H that he intended to use Amount F for home improvements; and to establish a rollover IRA in Amount D with the rest of the distribution. Documentation submitted by Taxpayer A shows that on Date 2, instead of establishing an IRA, Amount D was placed in Account M, a non-IRA account. Individual G, Vice President of Bank S acknowledges, under penalty of perjury, that on Date 2, Taxpayer A verbally expressed to Individual H that he would like Amount D to be deposited into an IRA account. Individual G states that Bank S failed to follow its own standard procedures and failed to open the account per Taxpayer A's instructions. Taxpayer A learned of the bank error on Date 3 when Taxpayer A's tax advisor contacted Bank S regarding Taxpayer A's retirement account funds. Amount D has not been used for any purpose.

Based upon the above facts and representations, a ruling is requested that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount D from Plan X.

Section 402(c) 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 rollover 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.

Revenue Procedure 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)(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.

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The information presented and documentation submitted on behalf of Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover as he intended was due to the failure of a representative of Bank N to follow Taxpayer A's instructions, which led to Amount D 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 D from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover 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 D to will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

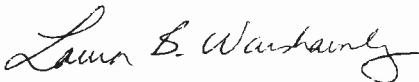
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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 Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact XXXXXXXXXX, ID Number XXXXXXXX at XXXXXXXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely,



for Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose