



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Uniform Issue List: 402.00-00

SETTLE: RAITI

Legend:

Taxpayer A

Plan A

Company A

Amount A

Policy A

Policy B

Dear

This letter is in response to a ruling request dated March 30, 2007, submitted by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code").

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

Taxpayer A sponsored Plan A, a defined contribution plan intended to qualify under section 401(a) of the Code. Company A serves as pension administrator and investment manager for Plan A. Taxpayer A asserts that his failure to accomplish a timely rollover of Policies A and B was caused by Company A's error in not telling him that Policies A and B could have been rolled over into another plan qualified under section 401(a) of the Code.

Plan A's assets consisted of cash and two life insurance policies. Dissatisfied with the investment performance of Plan A under Company A's management, on November 23, 2005, Taxpayer A decided to terminate Plan A.

With respect to the cash portion of Plan A, Company A provided Taxpayer A with forms and instructions for completing a trustee to trustee transfer of the cash to Taxpayer A's IRA. Since life insurance policies cannot be held by an IRA, Company A informed Taxpayer A that he could forfeit the policies, purchase the policies for their cash surrender value, or receive the policies as a taxable distribution and pay the 20 percent withholding tax on the distribution.

Taxpayer A elected to receive a distribution of the life insurance policies, and roll over the cash (minus Amount A which was the amount needed to pay the 20-percent withholding tax on the distribution of the life insurance policies) directly to an eligible retirement plan. Both forms were filled out accordingly to accomplish this purpose. These transactions were completed in March of 2006 and Plan A was terminated.

In February of 2007, after the lapse of the 60-day rollover period, Taxpayer A was informed by his tax advisors that while the life insurance policies could not have been rolled over into an IRA, they may have been rolled over into another retirement plan qualified under 401(a) of the Code. At the time the distribution was made, Taxpayer A was not a participant in any other retirement plan qualified under 401(a).

Based on the above facts and representations, Taxpayer A requests a waiver of the 60-day rollover requirement contained in Code section 402(c)(3), for transferring distributed qualified employee retirement funds to an eligible retirement plan, and rule that the retirement distribution of the life insurance policies and Amount A to Taxpayer A from Plan A shall not be included in Taxpayer A's gross income for tax year 2003.

Section 402(c)(3)(A) of the Code provides that any amount distributed from a qualified trust must be transferred to an eligible retirement plan no later than the 60th day following the day of receipt in order to avoid inclusion in the distributee's gross income.

Under Section 402(c)(8)(B) of the Code, the term eligible retirement plan means (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b), (iii) a qualified trust, and (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b). If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

Section 402(c)(3)(B) of the Code provides 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.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides guidance on applying to the Internal Revenue Service for a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Code. The Procedure states 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 Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this case, Taxpayer A has not presented any evidence to the Service as to how any of the factors described in Rev. Proc. 2003-16 affected his ability to satisfy the 60-day rollover requirements with respect to the life insurance policies. Instead, Taxpayer A asserts that Company A erred by not informing Taxpayer A that the policies could have been rolled over into another retirement plan qualified under section 401(a) of the Code since the policies could not be rolled over into an IRA. There is, however, no correspondence or other documentation in support of this assertion that there was another retirement plan qualified under 401(a) into which the life insurance policies could have been rolled over.

Taxpayer A also argues that the IRS should allow the rollover of the policies to be accomplished by treating the terminated Plan A as if it had not been terminated and then transferring the policies to this restored plan. In our view, such a transaction would be beyond the scope of Rev. Proc. 2003-16.

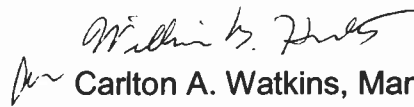
Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Policy A, Policy B and Amount A from Plan A and thus Policies A and B and Amount A will not be considered a valid rollover contribution within the meaning of section 402(c)(3)(B) of the Code, because the 60-day rollover requirement was not satisfied.

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 ruling only applies to the taxpayer named above. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact

Sincerely yours,


Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose, Notice 437

cc: