



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201005057

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Uniform Issue List: 402.00-00

SE: T, EP: RA: T

Legend:

- Taxpayer A = *****
- Company A = *****
- Company B = *****
- Amount 1 = \$ *****
- Plan X = *****
- Plan Y = *****

Dear *****:

This is in response to your request dated *****, as supplemented by correspondence dated *****, *****, and *****, in which your authorized representative requests a waiver of 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 requested

Taxpayer A was employed at Company A and participated in Plan X which was sponsored by Company A. When she ended her employment with Company A, Taxpayer A began employment with Company B. For a period of time after leaving Company A, Taxpayer A maintained her savings in Plan X. After speaking with individuals from Company B, Taxpayer A sought to roll the funds directly from Plan X into Plan Y, which was sponsored by Company B. On *****, Taxpayer A withdrew Amount 1 from Plan X with the intent of depositing those funds into Plan Y. The withdrawal was made in the form of a check for Amount 1 made payable to Company B, FBO Taxpayer A. Representatives of Plan Y accepted the check as drawn provided it was endorsed for "deposit only" by a principal of Company B. Taxpayer A held onto the check until *****, at which time it was deposited into Plan Y. Until then, Taxpayer A represents that Amount 1 had not been used for any other purpose.

It has been represented that during calendar year ****, Taxpayer A received a calendar year **** 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing a Plan X distribution to Taxpayer A with respect to calendar year **** for Amount 1. Box 7 (Distribution Code(s)) of said Form 1099-R was coded "G" indicating a "Direct Rollover" to a qualified plan.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to the distribution of Amount 1 contained in section 402(c)(3) of the Code in this instance.

With respect to your ruling request, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that 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 of the Code (relating to annuities).

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

Section 402(c)(3)(A) of the Code provides that, except as provided in subparagraph (B), paragraph (1) (which excludes rolled over amounts from gross income) 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.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) of the Code 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 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution --

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401(a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-3, provides, in relevant part, that a direct rollover that satisfies section 401(a)(31) is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of a distributee.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-4, provides, in summary, that providing a distributee with a check and instructing the distributee to deliver the

check to the eligible retirement plan is a reasonable means of direct payment as long as there is compliance with the requirements contained therein.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections 401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

The Preamble to the "Final" Income Tax Regulations under Code section 401(a)(31) provides, in relevant part, that ". . . the direct rollover option is provided in addition to the pre-existing rollover provisions under section 402. Thus, an employee who receives an eligible rollover distribution but does not elect a direct rollover still has the option to subsequently roll over the distribution to an eligible retirement plan within 60 days of receipt".

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.

In this case, the Service notes that Taxpayer A received a Plan X distribution in the form of a "direct rollover," as that term is defined in Code section 401(a)(31), of amounts due her from contributions and earnings from Plan X. The distribution check was given to Taxpayer A, but made out to Company B, FBO Taxpayer A; thus the check was not payable to Taxpayer A and Taxpayer A lacked control over the check and could not have disposed of it. The Form 1099-R received by Taxpayer A supports this conclusion by showing Code "G" in box 7, with no withholding for Federal income tax.

In short, Taxpayer A never received a distribution subject to the 60-day rollover requirement found in section 402(c)(3)(A) of the Code.

Thus the Service concludes as follows with respect to your ruling request:

That Taxpayer A's receipt of her distribution from Plan X was in the form of a "direct rollover" as that term is used in section 401(a)(31) of the Code and the Regulations promulgated thereunder. As a result, it was not subject to the 60-day rollover requirement of section 402(c)(3)(A) of the Code. Furthermore, consistent with the language on the check which indicates that it is payable to Company B, FBO Taxpayer A, Taxpayer A may place the check into Plan Y maintained by Company B.

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.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to your authorized representative.

If you wish to inquire about this ruling, please contact ***** (Identification Number *****)
at (***) ***-****. Please address all correspondence to *****.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1