



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201035043

JUN 08 2010

U.I.L. 402.00-00

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T:EP:RA:TY

Legend:

Taxpayer A = xxxxxx

Taxpayer B = xxxxxx

Plan X = xxxxxx

Employer M = xxxxxx

Amount N = xxxxxx

Amount O = xxxxxx

Account Y = xxxxxx

Bank C = xxxxxx

Bank D = xxxxxx

Account Z = xxxxxx

Date 1 = xxxxxx

Date 2 = xxxxxx

Date 3 = xxxxxx

Date 4 = xxxxxx

xxxxxx

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Date 5 = xxxxxx

Date 6 = xxxxxx

Date 7 = xxxxxx

Dear xxxxxx:

This is in response to a letter dated November 25, 2009, as supplemented by correspondence dated January 20 and February 17, 2010, in which your authorized representative requests, on behalf of your deceased spouse and you, a waiver of the 60 day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A, now deceased, received a distribution of Amount N from Plan X prior to her death at age 66. Taxpayer B, the surviving spouse of Taxpayer A, asserts that Taxpayer A intended to roll over Amount N into an Individual Retirement Arrangement (IRA). Taxpayer B asserts that Taxpayer A's failure to accomplish a rollover of Amount N within the 60-day period prescribed by section 402(c)(3) of the Code was due to Taxpayer A's hospitalization and subsequent death.

Taxpayer A participated in Plan X, a public employee retirement system, through her employment with Employer M. On Date 1, Taxpayer A submitted to Employer M an application for retirement effective Date 2 (four months after Date 1). As part of the retirement application process, employees have the option to choose among certain payment methods for the distribution of their account balances in Plan X.

Taxpayer A opted to receive a partial lump sum (PLS) payment and 36 monthly payments. A copy of the Partial Lump Sum Option Distribution Election form (Election Form) Taxpayer A completed and signed on Date 1 was submitted. Section 3 of the Election Form lists five (A – E) distribution options for a PLS payment, four of which are for direct rollover of a PLS payment to an eligible retirement plan, including an IRA.

Taxpayer A's Election Form shows that she checked option 3A, the sole non-rollover option, which instructed Employer M to transfer electronically, to the same financial institution and account as her monthly benefit payments were to be sent, the PLS payment less the mandatory 20 percent federal withholding from the taxable portion.

To request a direct rollover of a PLS payment, an employee must also complete section 2 of the Election Form. Taxpayer A's Election Form shows that section 2 had been completed but was deleted by being covered over with white-out.

Taxpayers A and B filed joint income tax returns. A copy of a Tax Planner Worksheet, prepared by the accountant approximately one month after Taxpayer A applied for retirement from Employer M, was submitted to the Service to show that Amount N was not listed on the worksheet as includible in income for the taxable year. It is asserted that the prospective non-inclusion of Amount N in the couple's income for tax filing purposes indicates that Taxpayer A intended to roll over Amount N of Plan X into an IRA.

Two months after Date 1, Taxpayer A became ill and was hospitalized. Taxpayer A remained hospitalized on Date 2, the effective date of her retirement.

It is represented that Taxpayer A executed a Durable Power of Attorney effective Date 3 naming Taxpayer B as her agent.

On Date 4, Employer M distributed Amount O, representing the taxable portion of Taxpayer A's partial lump sum payment minus 20 percent Federal income tax withholding from Plan X. In accordance with the Election Form completed by Taxpayer A, Employer M wired Amount O to Bank C where Bank C correctly deposited Amount O into Account Y, a joint checking account it maintained on behalf of Taxpayers A and B.

During the 60-day period following the distribution of Amount O, Taxpayer A died on Date 5 in the hospital where she had remained since becoming ill several months earlier.

On Date 6, Taxpayer B transferred Amount O plus other funds to Account Z at Bank D, a credit union account. On Date 7, Taxpayer B consulted with his tax adviser and was informed that Amount N should have been rolled over to an IRA during the 60-day period.

Based on the above facts and representations, you request a ruling 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 to Taxpayer A of Amount N from Plan X.

Section 402(c)(1) of the 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

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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 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) of the Code.

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), 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.

Although the information presented clearly shows that Taxpayer A was herself physically unavailable to accomplish a timely rollover of Amount N into an IRA, there is insufficient documentation to show that Taxpayer A had an intent to make such a rollover.

The documents Taxpayer A completed for the distribution of her benefits from Plan X do not support Taxpayer B's assertion that Taxpayer A intended to roll over Amount N into an IRA since Taxpayer A chose the only non-rollover option on the Election Form. The tax planning discussion is not sufficient to establish intent given that it conflicts with the actual Election Form executed by Taxpayer A.

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 N (or any portion thereof) from Plan X.

This ruling assumes that Plan X satisfied the qualification requirements of section 401(a) of the Code at all times relevant to this transaction.

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.

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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 as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact xxxxxx, I.D. xxxxxx, by telephone at \_\_\_\_\_ Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 4

Enclosures:  
Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: xxxxxx  
xxxxxx  
xxxxxx