



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 07 2010

Uniform Issue List: 402.00-00

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SE: T: EP: RA: TY

Legend:

- Taxpayer A = XXXXXXXXXXXXXXX
- Administratrix C = XXXXXXXXXXXXXXX
- Administrator N = XXXXXXXXXXXXXXX
- Court B = XXXXXXXXXXXXXXX
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- State E = XXXXXXXXXXXXXXX
- Plan X = XXXXXXXXXXXXXXX
- IRA Y = XXXXXXXXXXXXXXX
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- Financial Institution A = XXXXXXXXXXXXXXX
- Financial Institution B = XXXXXXXXXXXXXXX
- Company M = XXXXXXXXXXXXXXX
- Amount D = XXXXXXXXXXXXXXX
- Date 1 = XXXXXXXXXXXXXXX
- Date 2 = XXXXXXXXXXXXXXX
- Date 3 = XXXXXXXXXXXXXXX

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Date 4 = XXXXXXXXXXXXXXXX

Date 5 = XXXXXXXXXXXXXXXX

Year N = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your ruling request dated June 30, 2009, as supplemented by letters dated December 1, 2009, and December 8, 2009, submitted on behalf of the estate of Taxpayer A, by your authorized representative, in which you, as the Court Appointed Administrator of the estate of Taxpayer A, request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("Code") for a distribution made to Taxpayer A from Plan X.

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

Taxpayer A, age 52, was employed at Company M and participated in Plan X which was sponsored by Company M. Taxpayer A received a distribution from Plan X, totaling Amount D. You assert that Taxpayer A's failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to his physical and mental conditions which impaired his ability to make sound financial decisions or understand the consequences of his actions. Amount D has not been used for any other purpose.

Documentation shows that Taxpayer A suffered from severe mental disability. Taxpayer A's mental and physical health rapidly deteriorated during Year N, to the extent that he was unable to continue to perform his job with Employer M, his former employer; and was eventually terminated. Taxpayer A failed to seek medical attention and died on Date 3, approximately one month after the expiration of the 60-day rollover period.

Documentation shows that prior to his death, Taxpayer A verbally requested Employer M to rollover his retirement funds to IRA Y, which he opened on Date 1 with Financial Institution B. A few months before his death, Taxpayer A received a check dated Date 2 in Amount D from Financial Institution A, representing his entire interest in Plan X. The check was made payable to the order of Financial Institution B FBO Taxpayer A. In addition, a notation attached to the check describes the payment as a "Total Distribution-direct transfer – IRA." However, due to Taxpayer A's failing health and mental condition, he did not deliver the check to Financial Institution B and the check remained uncashed at the time of Taxpayer A's death.

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Although Taxpayer A was unable to complete the rollover within the 60-day rollover period, documentation shows that Taxpayer A intended to roll over Amount D. However, his medical and mental conditions which resulted in his death impaired his ability to handle his basic personal needs and financial affairs.

On Date 4, Administratrix C was appointed as Administratrix of Taxpayer A's estate and Letters of Administration were issued by Court B. However, prior to the settlement of Taxpayer A's estate, Administratrix C died. As a result, on Date 5, Administrator N became the Court Appointed Administrator of the estate of Taxpayer A. Administrator N has submitted Letters of Administration issued by Court B. Court B is located in State E and is asserted to be a court of competent jurisdiction.

Documentation shows that for calendar Year N, Taxpayer A received a Form 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 Year N for Amount D. Box 7 (Distribution Code(s)) of said Form 1099-R was coded "G" indicating a "Direct Rollover" to a qualified plan.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D from Plan X.

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.

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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

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elect a direct rollover still has the option to subsequently roll over the distribution to an eligible retirement plan within 60 days of receipt".

Rev. Proc. 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) of the Code, 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 him from contributions and earnings from Plan X. The distribution check was given to Taxpayer A, but made out to Financial Institution A, 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 his 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 Financial Institution B, FBO Taxpayer A, the Court Appointed Administrator of the estate of Taxpayer A may place the check into IRA Y maintained by Financial Institution B.

This letter assumes that Plan X was qualified under section 401(a) of the Code at the time of distribution of Amount D.

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.

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This ruling is directed only to the taxpayer that 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 XXXXXXXX, ID Number XXXXXXXX, SE:T:EP:RA:T4 at XXXXXXXXXXXXXXXX.

Sincerely yours,



Laura Warshawsky, Manager
Employee Plans, Technical Group 4

Enclosures:

- Deleted copy of letter ruling
- Notice of Intention to Disclose