

200430040



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

APR 30 2004

Uniform Issue List: 402.03-00

Legend:

Taxpayer =

Individual C =

Individual D =

Amount X =

Amount Y =

Amount Z =

Employer =

Plan A =

Date 1 =

Bank N =

Dear

This is in response to a ruling request submitted by you dated \_\_\_\_\_, in which you request a waiver of the 60-day rollover requirement contained in section 402(c) of the Internal Revenue Code ("Code").

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

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You were a participant in Plan A, a qualified retirement plan sponsored by your Employer.

Due to the hardships imposed by the health problems suffered by Individual C and Individual D, and confusion regarding the rollover requirements, you erroneously requested a distribution of Amount X in your interest in Plan A. On Date 1, you received the distribution from Plan A of Amount X, less 20% federal income tax withholding (Amount Y), for a net total of Amount Z. After receipt of this distribution, you deposited Amount Z in a money market account in Bank N, and these funds have remained in total in that account since they were deposited.

Subsequent to the distribution, you realized your error in withdrawing funds from Plan A and discovered your failure to timely roll over the distribution from Plan A in order to correct this error. You intend to contribute Amount X into a qualified Individual Retirement Arrangement (IRA).

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount X (the total of Amount Y and Amount Z), because the failure to waive such requirement would be against equity or good conscience.

Section 402(a) of the Code provides that any amount actually distributed to any distributee by any employees' trust described in section 401(a), which is exempt from taxation under section 501(a) of the Code, shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Section 402(c) of the Code defines, and provides the rules applicable to rollovers from exempt trusts.

Section 402(c)(1) of the Code provides section 402(a) does not apply to distributions from exempt trusts if –

- 1(a) 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,
- 1(b) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and,
- 1(c) 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 so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(3)(A) of the Code requires that an eligible rollover distribution from a qualified retirement plan must be transferred to an eligible retirement plan no later than the 60<sup>th</sup> day following the day of receipt in order to avoid having to include that distribution in the distributee's gross income for that year.

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.

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 403(c)(2)(B) 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.

The information you have presented demonstrates there was confusion because of the hardships imposed by the health problems of Individual C and Individual D, and your confusion with the rollover requirements. As such, this information indicates you could not reasonably satisfy the requirement that Amount X be deposited in an eligible retirement plan or IRA within 60 days of the distribution from Plan A.

Therefore, pursuant to section 402(c)(3)(B) of the Code, we waive the 60-day rollover requirement with respect to the part of Amount X that constitutes an eligible rollover distribution pursuant to section 402(c)(4) of the Code. An eligible rollover distribution can consist only of pre-tax amounts and earnings and does not include after-tax employee contributions or distributions required by section 401(a)(9) of the Code. You are granted a period of 60 days from the issuance of this ruling letter to make this rollover. If all other requirements of section 402(c) of the Code (except the 60-day requirement) are met with respect to the part of Amount X that constitutes an eligible rollover distribution, such amount will be considered a rollover contribution within the meaning of section 402(c) of the Code.

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 that 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.

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Pursuant to the power of attorney on file with this office, you are receiving the original of this letter ruling and your representative is receiving a copy of the letter ruling.

If you wish to inquire about this ruling, please contact  
at

SE:T:EP:RA:T4,

Sincerely yours,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

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