



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200433030

MAY 19 2004

Uniform Issue List: 408.03-00

SE: T: EP: PA: T4

Legend:

Company A =
Bank B =
Account C =
Amount D =
Amount E =
Amount F =
Plan X =

Dear

This is in response to a ruling request submitted by your authorized representative on ***** in which you request a waiver of the 60-day rollover requirement contained in section 402(c) of the Internal Revenue Code.

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

You were employed at Company A for ** years and a participant in Plan X. Company A closed its operations in your area, terminated Plan X, and you were subject to a severance of employment. Subsequently, on ***** you received a distribution of Amount D. After income taxes were withheld of Amount E, you received a check for Amount F from Plan X. You had not previously received any distribution from Plan X, other than a plan loan. You took the check you received from Plan X to Bank B on ***** and opened Account C. You

did not understand at that time that Account C was not an IRA. You intended to set up an IRA at Bank B in order to roll over the Plan X distribution. You were confused by the explanation provided to you by the Bank B employee whose inexperience in retirement plan matters may have contributed to this mistake or error in the establishment of a rollover IRA. You did not use the proceeds of the Plan X distribution at any time, except to establish Account C, and you have left the funds untouched in Account C.

Upon preparing your **** tax return, you first found out that the above transaction would be treated as a taxable transaction, subject to a 10% additional tax of the taxable amount of the distribution. On several occasions, you requested Bank B to change the transaction. However, a representative of Bank B each time indicated that you would have to provide a ruling from the Internal Revenue Service in order to complete the transaction as you intended.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D, because the failure to waive such requirement would be against equity or good conscience.

Section 402(a) of the Internal Revenue Code provides, in general, that any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) 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 provides rules applicable to rollovers from exempt trusts. In general, section 402(c)(1) provides that if an eligible rollover distribution is transferred to an eligible retirement plan, such as an IRA, the distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(4) provides that the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust except that such term shall not include

- (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made-
 - (i) for the life (or life expectancy) of the employee or the joint lives (or life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a period of ten years or more,
- (B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon the hardship of the employee.

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 60th day after 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)(8) of the Code provides, in part, that an eligible retirement plan includes an IRA, a qualified section 401(a) trust, and certain other designated plans.

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 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 information you presented indicates that within 60 days you took your distribution from Plan X to Bank B where the funds were deposited in Account C which you intended to be an IRA rollover account. You did not use the funds for any other purpose and the funds have remained untouched in Account C. In addition, you were confused by the information provided by the employee of Bank B and the mistake resulted in the transaction not being carried out in accordance with your intent.

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 D 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. You are granted a period of 60 days from the issuance of this ruling letter to contribute that part of Amount D that constitutes an eligible rollover distribution into an IRA. Provided all other requirements of section 402(c) of the Code (except the 60-day rollover requirement) are met with respect to the part of Amount D that constitutes an eligible rollover contribution, such amount will be considered a rollover contribution within the meaning of section 402(c) of the Code.

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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 hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you have any questions regarding this ruling, you may contact
ID # at

Sincerely yours,

for *1/5/ Ade Perry*
Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter