

200412002



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

DEC 22 2003

Uniform Issue List: 408.03-00

T. EP. RA: T3

Legend:

Taxpayer A = * * *
Individual B = * * *
Individual C = * * *
Amount D = * * *
Plan E = * * *
Company M = * * *

Dear * * *:

This is in response to a request submitted on your behalf by your authorized representative by letter dated September 17, 2003, for a ruling to waive the day rollover requirement contained in section 402(c)(3)(8) of the Internal Revenue Code ("Code").

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

Taxpayer A was a participant in Plan E. Individual B, an employee of Company M, convinced taxpayer A to roll over amounts due him under Plan E into an Individual Retirement Arrangement ("IRA) at Company M. On May 22, 2003, Taxpayer A withdrew said amounts from Plan E and received a lump sum distribution of Amount D (less 20% federal withholding). Individual B did not notify Taxpayer A of the 60-day rollover period. Individual B also failed to advise Taxpayer A that taxes would be withheld from her distribution. Plan E is an arrangement defined in section 457 of the Code.

Prior to the expiration of the 60-day rollover period prescribed in section of the Code, on July 14, 2003, Taxpayer A, who has an extensive history of health problems, including esophageal cancer, was admitted to a

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Page 2

hospital for exploratory surgery. The effects of the surgery and treatments, in combination with the mental anguish resulting from the recent loss of several close family members, rendered her unable to consummate the rollover of her funds received from Plan E within the 60-day period.

Upon recovering from her surgery and treatment, Taxpayer A promptly contacted Individual C on or about August 1, 2003. Individual C then promptly commenced legal research to ascertain if there was a basis for seeking a waiver of the 60-day rollover rule.

Taxpayer A is still holding the funds received from the distribution from Plan E. Upon receiving a waiver of the 60-day rollover rule, Taxpayer A will promptly deposit Amount D into an IRA at Company M.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B, because the failure to waive such requirement would be against equity or good conscience under the provisions of section 402(c)(3)(B) of the Code.

Section 457(a) of the Code provides that any amount of compensation deferred under an eligible deferred compensation plan (as defined in section 457(b) of the Code), and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in section 457(e)(1)(A) of the Code, and is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in section 457(e)(1)(B) of the Code. Sections 457(e)(1)(A) and (B) of the Code, respectively, describe "eligible employer" as a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state, and as any other organization (other than a governmental unit) exempt from tax under this subtitle.

Section 457(e)(16)(A) of the Code (concerning rules applicable to rollovers from compensation plans of state and local governments and tax-exempt organizations) provides, in part, that if any portion of the balance to the credit of an employee is paid to the employee in an eligible rollover distribution (within the meaning of section 402(c)(4) of the Code) and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B) of the Code, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Page 3

Section 457(e)(16)(B) of the Code provides that the rules of paragraphs (2) through (7) and (9) of section 402(c) of the Code and section 402(f) of the Code shall apply for purpose of subparagraph (A) above.

Section 402(c)(8)(B) of the Code provides, in relevant part, that an "eligible retirement plan" includes an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code.

In general, section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) 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. Subparagraph (B) provides that the Secretary may waive the 60-day requirement under subparagraph (A) 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 eligible rollover distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 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) or 408(d)(3)(l), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; 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 presented by Taxpayer A demonstrates a mistake on the part of Individual B by not informing Taxpayer A of the 60-day requirement. In addition, Taxpayer A has demonstrated that she was unable to complete the transaction based upon her extensive hospitalization and accompanying mental anguish. The failure to deposit Amount D into an IRA within the 60-day rollover period was beyond the reasonable control of Taxpayer A, and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 402(c)(3)(B) of the Code, as made applicable to a plan described in section 457 of the Code under section 457(e)(16)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D to an IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement,

200412002

Page 4

are met with respect to such contribution, this amount will be considered a rollover contribution within the meaning of section 402(c)(3) 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, which may be applicable thereto.

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 in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***, I.D. # ***, at ***. Please address all correspondence to ***.

Sincerely yours,



Frances V. Sloan
Manager, Technical Group T3
Employee Plans

Enclosures: Deleted copy of this letter
Notice of Intention to Disclose, Notice 437