



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV - 9 2004

SE:T:EP:RA:T3

Uniform Issue List: 408.03-00

[REDACTED]

Legend:

Taxpayer A = [REDACTED]  
Company L = [REDACTED]  
Amount D = [REDACTED]  
Plan X = [REDACTED]

Dear [REDACTED]

In letters dated April 30, 2004, as supplemented by correspondence dated August 3, 2004, and September 13, 2004, your authorized representative requested a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the Code).

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

Taxpayer A is a 61-year old widow who was employed as a retail clerk by Company L. Taxpayer A retired from Company L in [REDACTED]. Upon retirement, Company L closed Taxpayer A's account in its section 401(k) plan, Plan X, by issuing her [REDACTED] shares of Company L stock on a single stock certificate with a market value of Amount D which Taxpayer A received on [REDACTED]. Taxpayer A called Company L seeking advice and was erroneously told that no tax would be due until she sold her stock. Taxpayer A was not aware of the 60-day rollover rule and was never consulted or advised to roll over the Company L stock, worth Amount D, into another account. Having no prior experience with stock certificates, Taxpayer A did not understand that the actual Company L stock certificate she held represented a tangible investment. She understood it to be a receipt or representation of her account, and she thought her account was still invested in Plan X. Relying on the advice of the Company L representative Taxpayer A placed the stock certificate in a safe deposit box.

Based on the 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 a hardship and against equity or good conscience.

With respect to your request to waive to 60 day rollover requirement, 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 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-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).

Code 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.

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.

Revenue Procedure 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)(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 provided by Taxpayer A demonstrates a failure on the part of Taxpayer A to satisfy the Code section 402(c) rollover requirements due to a lack of knowledge about stock certificates and her reliance on misleading advice from a Company L representative. Taxpayer A called Company L seeking advice and was told that no tax liability would be incurred until she liquidated her stock. Taxpayer A has made no attempt to cash or sell the stock certificate and the certificate has been held in a safe deposit box pending the result of her request to the Internal Revenue Service.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, or any portion thereof, to an IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions 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 which 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.

If you wish to inquire about this ruling, please contact [REDACTED] I.D. # [REDACTED], at (202) [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

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

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose