



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200508030

SE.T:EP:PA:74

Uniform Issue List: 408.03-00

NOV 30 2004

Legend:

Plan X =
Company A =
Amount C =
Date D =
Date E =
Date F =
Date G =

Dear

This is in response to a ruling request submitted by you on ***** as supplemented by additional letters dated ***** for a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("the Code").

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

You were a participant in Plan X maintained by your former employer, Company A. You separated from the service of Company A on Date D and received a distribution of Amount C on Date E. Amount C represented the total distribution due you from Plan X less federal withholding. It was your intent to redeposit Amount C into an IRA. However, Amount C was mistakenly deposited into a regular savings account on Date G at a local bank where it remains. At the time

you received Amount C you were caring for your terminally ill mother. Your mother passed away shortly thereafter on Date F.

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

Section 402(a) of the Code provides, except as otherwise provided in this section, 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 or a qualified trust, 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) of the Code 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.

200508030

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(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 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, 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 presented demonstrates that the events caused by the illness and death of Individual A's mother resulted in Amount C not being rolled over into an IRA within 60 days as Individual A intended.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount C. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount C 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 such contribution, Amount C 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 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.

If you have any questions regarding this ruling, you may contact *****

Sincerely yours,



Donzell Littlejohn, Manager
Employee Plans Technical Group 4

200508030

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter