



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200436023

U.I.L. 402.08-00

JUN 8 2004

Legend:

Taxpayer A = *****
Amount D = *****
Amount E = *****
Corporation B = *****
Corporation G = *****
Corporation M = *****
Form F = *****
Plan X = *****
Plan Y = *****

Dear *****

This is in response to your letter dated November 18, 2003, as supplemented by correspondence dated March 4, March 23, and April 28, 2004, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code ("Code").

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

Taxpayer has been an employee of Corporation B since . Corporation B is a wholly owned subsidiary of Corporation G, which is a wholly owned subsidiary

of Corporation M. On or around _____, Corporation M, through Corporation G, acquired Corporation B. Prior to the acquisition, Corporation B maintained its own qualified plan, Plan X. Plan X provided for both employee and employer contributions. Taxpayer A was a participant in Plan X when he was employed by Corporation B.

Effective as of _____, Plan X was merged into Plan Y, and as part of this merger, the assets allocated to each participant's account in Plan X were transferred to Plan Y. Corporation M sponsors Plan Y. You represent that the Plan X assets were allocated to a "Prior Employer" account in Plan Y that was established to fund the benefits payable under Plan X.

Taxpayer A asserts that when Plan X merged into Plan Y the in-service distribution provisions of Plan X were carried over to Plan Y and continue to apply to amounts held in the Prior Employer accounts established in Plan Y. Taxpayer A further asserts that he was eligible to receive an in-service distribution of his Prior Employer account in Plan Y based on an option contained in Plan X that provides "that after a participant has participated in the plan for a period of not less than five years and is one hundred percent vested in these accounts, until he retires, the participant has a continuing election to receive all or any portion of the accounts".

Based on the above provisions, Taxpayer A, on _____, requested a distribution in the amount of Amount D, from his Prior Employer account in Plan Y. Taxpayer A asserts that it was his intention, at the time he requested the distribution, to transfer Amount D to another Code section 401(k) plan which he thought had more investment options. In order to accomplish this distribution, Taxpayer A filed Form F with Corporation M who then forwarded the form to its third party administrator. On _____, the plan administrator of Plan Y sent Taxpayer A a check in the amount of Amount E (Taxpayer's account balance in his Prior Employer's account less 20 percent withholding). Taxpayer A did not cash the check, nor did he attempt to roll the amount over to another Code section 401(k) or individual retirement arrangement (IRA).

In _____, Taxpayer A decided to redeposit the check in the amount of Amount E back into Plan Y. Taxpayer A asserts that he was informed by the plan administrator of Plan Y that the distribution could not be rolled back into Plan Y because the plan had entered a blackout period due to a change in third party administration and that the blackout period would end _____, beyond the 60-day rollover period. Taxpayer A received a Form 1099-R indicating that a taxable distribution in the amount of Amount D was made to him during calendar year ____.

Taxpayer A asserts that he has not cashed the distribution check in the amount of Amount E as of this date and that it was never his intention to remove the money from a tax-deferred account.

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 from Plan Y.

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) of the Code 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, in the manner provided under section 72 (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Code section 402(c)(1) provides, generally, that if any portion of an eligible rollover distribution from a qualified trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an 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 joint life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a specified period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

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

Code Section 402(c)(8) defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides, generally, that section 402(c)(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.

Code section 402(c)(3)(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 distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

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) 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.

In this case, a taxable distribution in the amount of Amount D was made to Taxpayer A in _____ as supported by the Form 1099-R that was submitted with this request. Taxpayer A asserts that it was his intention at the time he requested the distribution to either transfer Amount D to another Code section 401(k) plan or to an IRA. Taxpayer A further asserts that it was never his intention to remove these assets from a tax deferred account. Taxpayer A submitted a copy of the uncashed check in the amount of Amount E with his request for a ruling. Taxpayer A asserts that to date the check remains in his possession and that he has not cashed the check or otherwise used it.

Therefore, assuming that the distribution of Amount D qualifies as an eligible rollover distribution under Code section 402(c)(4), and further assuming that Taxpayer A was eligible under the terms of Plan Y to receive the distribution in the amount of Amount D, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from Plan Y. Taxpayer A is granted a period of 60 days from the date of this ruling to rollover Amount D to an IRA. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to such contribution, we conclude that the 60-day rollover requirement is waived and that Amount D will be considered a valid rollover contribution within the meaning of Code section 402(c)(1).

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code.

This letter assumes that Plan X and Plan Y satisfy the requirements for qualification under Code section 401(a) at all times relevant to this transaction. No opinion is expressed as to whether the distribution from Plan Y qualifies as an eligible rollover distribution under Code section 402(c)(4) or whether Taxpayer A was eligible, under the terms of Plan Y, to receive an in-service distribution from Plan Y.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

If you have any questions regarding this letter, please contact

*****SE:T:EP:RA:T:2.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose