



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

20 0439049

U.I.L. 402.08-00

JUL 1 2004

Legend:

Taxpayer A = *****
Taxpayer B = *****
Amount D = *****
Amount E = *****
Plan X = *****
Corporation S = *****
Company F = *****
Company C = *****
Individual M = *****

Dear *****:

This is in response to your letter dated January 5, 2004, a supplemented by correspondence dated June 24, 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 A and Taxpayer B terminated employment with Corporation S in and respectively. Prior to their termination of employment, Taxpayer A and Taxpayer B were participants in Plan X, a Code section 401(k) plan, maintained by Corporation S. In November Taxpayer A and Taxpayer B asked Company F, the administrator of Plan X, to close their Plan X accounts and distribute those amounts so that they could make rollovers to individual retirement arrangements (IRA).

During this time Taxpayer A and Taxpayer B assert that they met with Individual M, a representative of Company C, concerning the distributions they anticipated receiving from Plan X. Taxpayer A and Taxpayer B further assert that Individual M informed them that as long as they did not deposit Amount D and Amount E in non-IRA accounts or otherwise cash the checks there was no time requirement for completing a rollover. Subsequently, a distribution in the amount of Amount D was made from Plan X to Taxpayer A in and a distribution in the amount of Amount E was made to Taxpayer B in . The check received by Taxpayer A is payable to the order of "Company C TR IRA FBO Taxpayer A". The check received by Taxpayer B is payable to the order of "Company C TR IRA FBO Taxpayer B". On the advice of Individual M concerning the absence of a time requirement for completing a rollover, Taxpayer A and Taxpayer B put both checks in a safe deposit box.

Late in the summer of Taxpayer A and Taxpayer B attempted to complete tax-free rollovers and were informed that rollover IRAs could not be established because the 60-day time period for completing the rollovers had expired. Taxpayer A and Taxpayer B assert that the checks in the amount of Amount D and Amount E have not been cashed and remain in their personal possession.

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 and Amount E from Plan X.

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 occur 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 distribution in the amount of Amount D was made to Taxpayer A and a distribution in the amount of Amount E was made to Taxpayer B in 2002 as supported by the Forms 1099-R submitted with their request for a ruling and further supported by copies of the checks issued by Company F. Taxpayer A and Taxpayer B assert that at the time they received the distributions from Plan X, it was their intent to establish IRAs as evidenced by the fact that the distribution checks issued by Company F were made payable to "Company C TR IRA FBO" Taxpayer A and Taxpayer B, respectively. Taxpayer A and Taxpayer B assert that they have not cashed or otherwise used Amount D and Amount E, and that the distribution checks received from Plan X remain in their personal possession.

Therefore, assuming that the distribution of Amount D and Amount E qualify as eligible rollover distributions under Code section 402(c)(4), 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 and Amount E from Plan X. Taxpayer A and Taxpayer B are granted a period of 60 days from the date of this ruling to rollover Amount D and Amount E to IRAs. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to such contributions, we conclude that the 60-day rollover requirement is waived and that Amount D and Amount E will be considered valid rollover contributions 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 satisfies the requirements for qualification under Code section 401(a) at all times relevant to this transaction.

No opinion is expressed as to whether the distributions from Plan X qualify as eligible rollover distributions under Code section 402(c)(4),

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