200447051

INTERNAL REVENUE SERVICE

AUG 26 2004

Uniform Issue List: 408.03-00

SE:T:EP:RA:T4

Legend:

Taxpayer A=

Amount B=

IRA C=

County D=

Plan E=

Credit Union F=

Date G=

Dear :

This is in response to your correspondence dated , , and , , 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 under penalty of perjury in support of the ruling requested:

Taxpayer A terminated employment with County D on Date G and requested County D to make a direct rollover of Amount B from Plan E to IRA C that Taxpayer A had with Credit Union F. Taxpayer A had extensive conversations with both County D and Credit Union F about her direct rollover intention. In order to consummate the intended rollover, Taxpayer A completed distribution forms with both County D and Credit Union F. Taxpayer A was assured by both institutions that the rollover would be done automatically and in a timely manner. Taxpayer A believed that Amount B was rolled over into IRA C. However, she discovered this did not occur when she received two checks that totaled Amount B. Taxpayer A contacted County D and Credit Union F as to why the direct rollover did not occur. Each institution blamed the other party.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Amount B.

Section 402(a) 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) 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 of the Code.

Section 402(c) of the Code defines and provides the rules applicable to rollovers from exempt trusts.

> Section 402(c)(1) of the Code provides that if ——
>
> (A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,
>
> (B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and
>
> (C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(3) of the Code provides that the transfer must be made within 60 days of receipt. In general, section 402(c)(3)(A) provides that section 402(c)(1) shall not apply to any transfer 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.

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), 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 by Taxpayer A demonstrates that Taxpayer A made it clear during extensive conversations and completion of distribution forms with County D and Credit Union F about her desire to make a direct rollover of Amount B to IRA C. However, a misunderstanding occurred between County D and Credit Union F which resulted in a direct rollover not being made. The errors committed by County D and Credit Union F prevented a direct rollover of Amount B into IRA C within 60-days.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount B. Taxpayer A is granted a period of 60 days from the date of issuance of this ruling letter to contribute Amount B in cash into IRA C. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met Amount B 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 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 , , at . Please address all correspondence to .

Sincerely yours,

Donzell Littlejohn

, Manager
Employee Plans Technical Group 4

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