

200601042



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT 13 2005

CE: T. EP. RA. TI

Uniform Issue List: 408.03-00

Legend:

Individual A =
Plan X =
Company A =
Company B =
Amount C =
Month F =
Date G =
Month H =
Month I =

Dear

This is in response your ruling request 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:

Individual A, age **, was an employee of Company A and terminated employment during Month F to pursue a different job. Individual A was a participant in Plan X,

maintained by Company A. After Individual A left Company A, she continued to receive periodic benefit statements from the Plan X trustee, Company B, regarding her retirement account. Since the stock market's continual decline was negatively affecting Individual A's benefits, she found the benefit statements depressing and stopped paying attention to mail addressed from Company B. On Date G Company B mailed a check in Amount C to Individual A cashing out the entire account balance of Individual A. However, this distribution was unexpected and Individual A did not open the correspondence from Company B containing the check until Month H. At that time the 60-day rollover period had expired. During Month I, Individual A deposited Amount C in a savings account at a local bank where it remains.

Based on the above facts and representations, you request that the Service waive the 60 day rollover requirement with respect to Amount C.

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)(1) of the Code provides that section 402(a) does not apply to distributions from exempt trusts 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)(A) of the Code requires that an eligible rollover distribution from a qualified trust 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)(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, although it was within your reasonable control, you did not pay attention to correspondence from Company C which resulted in your being unaware that a distribution of your retirement benefits had been made by Company C. These circumstances do not justify the granting of a waiver of the 60-day rollover period.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to Amount C.

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,

for */s/ Ada Perry*
Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter