200842048

Department of the Treasury
Internal Revenue Service

JUL 25 2008

Uniform Issue List: 402.03-00

T:EP:RA:T:3

Legend:

Company M =

Plan X =

Company N =

Amount A =

Amount B =

Amount C =

Amount D =

IRA Y =

Dear

This is in response to correspondence dated February 28, 2008, as supplemented by correspondence dated June 2, 2008, in which your authorized representative requested on your behalf 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:

You were divorced from your husband on January , 2006. Pursuant to the requirements of a qualified domestic relations order, you were awarded one-half of the value of his account in his employer-sponsored retirement plan, Plan X. His employer, Company M, sponsored Plan X. It has been represented that Plan X is a qualified plan as described in section 401(a) of the Code.

The qualified domestic relations order required that you receive a lump sum distribution of your one-half interest in Plan X, plus all earnings attributable to your interest from the date of valuation until your interest was segregated from your former husband's interest.

Company N, the Plan X administrator's agent, received the qualified domestic relations order and in a letter dated May 22, 2006, notified all parties of its determination that the qualified domestic relations order was not qualified because of a drafting error in identifying Plan X.

Counsel for your ex-husband drafted an amended qualified domestic relations order, correctly identifying Plan X, which was approved on July 14, 2006 by the court which had jurisdiction over your divorce. You specifically asked your accountant to review the qualified domestic relations order. Your accountant did not inform you that the qualified domestic relations order required a lump sum distribution be made to you as soon as administratively possible.

Company N approved the amended qualified domestic relations order and sent you a letter dated August 23, 2006, indicating that funds had been segregated to your account in an amount equal to Amount A. Amount A was equal to your one-half interest in Plan X plus all earnings attributable to your interest from the date of valuation until the date of segregation. You received a Confirmation of Your Activity statement from Plan X dated August 23, 2006, indicating that your account had been set up for annual withdrawals. Due to this, you thought that you had an account with Plan X and that you could make annual withdrawals from this account. You did not understand that Plan X would disburse the lump sum distribution as soon as administratively possible.

On October 23, 2006, your account was valued at Amount B. On that date, Company N prepared and sent a check distributing the net proceeds to you. You received a check from Company N of Amount C, which was equal to Amount B less federal withholding of Amount D. (Amount B minus Amount D equals Amount C.)

Upon receipt of the check in late October 2006, you met with your accountant for advice related to your divorce proceedings. On November 18, 2006, the accountant drafted a letter to Company N requesting that Company N reestablish your account with Plan X with the amount of the distribution and withheld taxes, and returned the check with the words "VOID" written across it. In that letter, your accountant wrote that Amount C was distributed in error pursuant to the qualified domestic relations order since you were not subject to the minimum distribution rules of section 401(a)(9) of the Code and did not request the distribution.

On November 30, 2006, Company N wrote to your accountant informing him that they did not have authorization from you to discuss your account with a third party. You did not receive a copy of this letter.

On February 2, 2007, your accountant prepared a letter for you to sign authorizing Company N to communicate with him. Also on that date, your accountant prepared a separate letter reiterating the request that Company N reverse the distribution to you, return the withheld taxes to your account in Plan X and issue a corrected Form 1099-R to you. On February 23, 2007, Company N responded to you that this request was denied because Amount C was correctly distributed in accordance with the terms of Plan X.

On May 18, 2007, your accountant filed an Administrative Claim with Company N requesting that the distribution be returned to your account in Plan X. In an August 6, 2007 letter to your accountant, Company N denied the Administrative Claim to reverse the distribution since the qualified domestic relations order provided for the lump sum distribution which you received. On August 27, 2007, Company N sent a letter to your accountant indicating that they would reissue a check to you in Amount C. You did not receive copies of the August 6 or August 27, 2007 letters and were unaware of the correspondence.

Because you were having difficulty communicating with your accountant who did not respond to your telephone calls and email messages, on June 18, 2007 you met with a new accountant to assist you in the appeal of the Administrative Claim denial. At that meeting, the new accountant explained the tax consequences of what had transpired under the guidance of your first accountant; specifically, he explained that the Plan X distribution of Amount B was taxable and that the distribution could have been rolled over into an Individual Retirement Arrangement (IRA) tax-free. At that meeting, your new accountant explained the rollovers rules and the mandatory distribution provisions of the qualified domestic relations order. Until this meeting, you thought that your first accountant would get the distribution reinstated in Plan X.

You received the reissued check from Company N, dated September 6, 2007, on September 14, 2007. In addition, you received copies of the August 6 and August 27, 2007 letters sent to your accountant in correspondence sent to you from Company N dated September 23, 2007.

Your new accountant timely filed an appeal with Company N on October 9, 2007 indicating that you were never informed of the tax consequences of the distribution, as set forth in the qualified domestic relations order, by any persons who were in a position to advise you. On October 16, 2007, Company N sent your new accountant an email which stated that in its August 23, 2006 letter indicating that your funds had been segregated from your ex-husband's, contrary to what is typical according to its model template, they did not state that your assigned portion would be paid to you as a taxable distribution, less federal income tax withholding, if you did not contact them to initiate a direct rollover within 60 days.

While awaiting Company N's decision on your appeal, on October 23, 2007 you deposited the reissued check of Amount C plus Amount D into an IRA, IRA Y. Amount D represented additional funds equal to the twenty percent withheld from the gross amount of the Plan X distribution.

Company N formally denied your appeal in a letter dated November 27, 2007.

It has been represented that you did not spend or otherwise use any of the Plan X funds distributed on your behalf for any purposes. The total amount that you deposited into IRA Y, Amount B, has remained intact.

Throughout your marriage, you were a housewife with no business, financial or legal background. You relied heavily on the accountant you had retained to assist you with tax issues arising during and after the divorce, including advising you of the tax consequences of the property settlement pursuant to your divorce. Upon receiving letters and other written information pertaining to your divorce, your custom was to forward those documents to the accountant you had hired to provide tax advice concerning your divorce. You also retained an attorney to represent you in the divorce and assist you in the division of marital assets. Although both the accountant and attorney reviewed the qualified domestic relations order, neither advised you of the qualified domestic relations order's requirement that a lump sum distribution of the funds from Plan X occur as soon as administratively possible or the tax consequences of receiving a lump sum distribution from a qualified retirement plan. Specifically, neither your accountant nor your attorney advised you that you could request a direct rollover from Plan X to another qualified plan or IRA, or that you could roll over a distribution from Plan X into an IRA.

Based on these facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code regarding 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. An IRA constitutes one form of eligible retirement plan.

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, in relevant part, 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.

Section 402(e)(1)(A) of the Code provides, in pertinent part, that for purposes of section 402(a), an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order, as defined in section 414(p).

Section 402(e)(1)(B) of the Code provides that if any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order, within the meaning of section 414(p), section 402(c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that, in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) 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.

The information presented and documents submitted on your behalf by your authorized representative are consistent with your assertion that your failure to accomplish a timely rollover was caused by lack of information and advice from your accountant and attorney concerning the Plan X distribution to you and the tax consequences of the distribution. Because you received a Confirmation of Your Activity statement from Plan X indicating that your account had been set up for annual withdrawals, you thought that you had an account with Plan X and that you could make annual withdrawals from this account. You did not understand that Plan X would disburse the lump sum distribution as soon as administratively possible. When you received the distribution check, you relied upon your accountant to advise you of your options concerning deferral of the payment of tax on the distribution, as well as to take any necessary actions on your behalf to effect annual withdrawals of such Plan X distribution. You did not learn of the tax consequences of the distribution or your ability to roll over the distribution until after the expiration of the 60 day period. It was your intent to defer the distribution of the Plan X funds awarded to you as part of the divorce settlement, as evidenced by your deposit of Amount B into IRA Y.

Therefore, 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 B, and subsequent deposit of Amount B into IRA Y as a Rollover IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount B 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 which may be applicable thereto.

This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) of the Code, or whether IRA Y is an IRA as described in section 408 of the Code.

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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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact , I.D. # , at . Please address all correspondence to .

Sincerely yours,

Frances V. Sloan

, Manager
Employee Plans Technical Group

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