



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200429017

APK 2 1 2004

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Uniform Issue List Numbers: 402.08-00; 402.00-00

Legend:

- Taxpayer - *****
- Employer A = *****
- Company B = *****
- Employer C = *****
- Amount D1 = *****
- Amount D2 = *****
- Amount D3 = *****
- Amount D4 = *****
- Amount D5 = *****
- Plan X = *****
- Plan Y = *****

Dear *****

This is in response to a letter dated December 10, 2003, in which the Taxpayer named above requests, through his authorized representative, 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 request:

From ****, **** to ****, ****, the Taxpayer was employed by Employer A and participated in Plan X, Employer A's qualified retirement plan. At all times while he was employed by Employer A, the Taxpayer lived at his current address. Upon

separation from the service of Employer A, the Taxpayer elected to leave his account balance in Plan X. Subsequent to the Taxpayer's departure, Company B purchased former Employer A and terminated Plan X. The Taxpayer's account balance at the time that Plan X assets were liquidated was Amount D1.

On ***** **, Company B issued the Taxpayer a check for Amount D2 (representing the Taxpayer's account balance at the time of termination (Amount D1), less federal income taxes withheld (Amount D3) and state income taxes withheld (Amount D4). Company B then attempted to mail this distribution to an address where the Taxpayer had worked 14 years earlier. Also during _____, Company B submitted Amount D3 to the federal government, and Amount D4 to the appropriate state government. However, the attempt to contact the Taxpayer directly failed, and the distribution check for Amount D2 was returned to Company B.

The Taxpayer received no notification from either former Employer A, Company B, or Plan X that the plan had been terminated and the plan's assets liquidated, until he received a letter dated ***** informing him that a plan termination and liquidation had taken place. Upon receipt of the ***** letter, the Taxpayer promptly contacted Company B and informed Company B of his correct address. On ***** , Company B issued the Taxpayer a new check for Amount D2, and the Taxpayer received the new check on **** **, At the same time the Taxpayer received the new check, he also received a _____ Form 1099-R, stating that the entire Amount D1 had been distributed to him by Plan X in _____

On ***** **, the Taxpayer deposited Amount D1 into Plan Y, a cash or deferred arrangement qualified under Code §§ 401(a) and 401(k) established and maintained by the Taxpayer's current employer--Employer C. The deposit into Plan Y consisted of the check for Amount D2, representing the net distribution from Plan X after income tax withholdings, and a check from the Taxpayer for Amount D5, representing the federal and state income taxes withheld from the Plan X distribution during calendar year _____ (It is noted that the _____ Form 1099-R was received from Plan X after the Taxpayer had filed his _____ federal income tax returns on ***** , *****.)

Based on the facts and representations recited above, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D3 and D4 from Plan X made in _____ because failure to waive such requirement would be against equity or good conscience.

Code § 402(a) provides that any amount actually distributed to any distributee by an employees' trust described in § 401(a), which is exempt from tax under § 501(a), shall be taxable to the distributee, in the taxable year in which distributed, under Code § 72 (relating to annuities).

Code §§ 401(a)(31) and 402(c) define and provide the rules applicable to rollovers of distributions from plans qualified under § 401(a) to other eligible retirement plans.

Code § 401(a)(31) generally provides that a plan is not a qualified plan unless it provides that if a distributee of any eligible rollover distribution elects to have such distribution paid directly into an eligible retirement plan and specifies the plan to which such distribution is to be paid, then such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Code § 402(c)(1) provides that § 402(a) shall not apply to a distribution from a qualified plan, if—

(A) all or 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 to an eligible retirement plan, and

(C) in the case of a distribution of property other than money, the transfer consists of the property distributed.

Code § 402(c)(4) defines an "eligible rollover distribution" as a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term does not include any distribution that is: (i) one of a series of substantially equal periodic payments, (ii) required under Code §401(a)(9), or (iii) made upon the hardship of the employee.

In pertinent part, Code § 402(c)(8)(B) includes a "qualified trust" in its definition of an "eligible retirement plan."

Code § 402(c)(3)(A) provides that § 402(c)(1) shall only apply to an amount actually distributed from a qualified trust if all or a portion of the distribution is transferred into an eligible retirement plan no later than the 60th day following the day on which the distributee received the property distributed.

Code § 402(c)(3)(B) provides that the Secretary of the Treasury may waive the 60-day requirement of § 402(c)(3)(A) in "hardship" situations where 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that, in determining whether to grant a waiver, 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, the Taxpayer was not apprised of the termination and liquidation of Plan X assets until many months after the event had occurred. It must also be inferred that the taxpayer received no timely notice that Plan X was being terminated, and therefore he had no opportunity to avail himself of his right under Code § 401(a)(31) to request a direct rollover of his Plan X assets to another eligible retirement plan—either an individual retirement account or annuity, or in this case, Plan Y. The failure of

Company B or the Plan X administrator to notify the Taxpayer of the Plan X termination and pending liquidation of assets, placed the ability to dispose of those assets in a timely manner totally beyond the Taxpayer's reasonable control. It is further noted that there is no record of either Company B or the financial institution maintaining Plan X trying to contact the Taxpayer about his account prior to the termination and liquidation of Plan X.

Therefore, pursuant to Code § 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement with respect to Amount D3 and Amount D4. Provided all other requirements of Code § 402(c), except the 60-day requirement, are met with respect to such contributions, Amounts D3 and D4 will be considered rollover contributions within the meaning of Code § 402(c)(1) as of *****, the date the Taxpayer actually contributed those amounts into Plan Y. (With regard to Amount D2, no waiver is necessary because that amount was rolled over into Plan Y within 60 days following *****, the day on which the Taxpayer actually received the property distributed.)

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any section of either the Code or regulations which may be applicable thereto, other than the provisions directly cited in this ruling.

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

If you wish to inquire about this ruling, please *****
***** address all correspondence to SE:T:EP:RA:T1.

A copy of this letter and other documents pertinent to this private letter ruling have been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Rulings & Agreements
Technical Group 1 SE:T:EP:RA:T1

Enclosures:

- ▶ Deleted copy of this letter
- ▶ Notice of Intention to Disclose
- ▶ Copy of Notification Letter to Authorized Representative