



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Legend:

- 401(k) Plan = *****

- Amount B = \$*****
- Amount C = \$*****
- Amount D = \$*****
- Amount E = \$*****
- Credit Union = *****

- IRA X = *****

Dear *****:

This is in response to a request submitted on your behalf by your authorized representative by letter dated May 23, 2003, as supported by additional correspondence dated October 7, 2003, for a ruling to waive the 60-day rollover requirement contained in section 402(c) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury to support the ruling requested:

Page 2

In connection with your retirement, you asked for a distribution of Amount B from your 401(k) Plan in order to obtain funds to acquire a new residence. You deposited in the Credit Union a check for Amount C on October 18, 2002, which was the distribution from your 401(k) Plan, reduced by federal withholding of Amount D.

You wanted to close on the new residence as soon as possible. Since the check representing the distribution from your 401(k) plan was drawn on an out-of-state bank and the check was in excess of \$*****, the Credit Union put a "hold" on the funds until *****. You had to pull back from closing on the new residence until after that date, and the settlement was completed on November 15, 2002.

Later, you decided to roll over the distribution to eliminate the tax on such a large distribution in one single year. In a lengthy process, you borrowed funds, and you completed the rollover of Amount E into IRA X on January 3, 2003.

During your conference of right and in a post-conference brief, your authorized representative argued that the funds distributed from your 401(k) Plan were not available to you until November 4, 2002, when the Credit Union took the hold off of the funds distributed from your 401(k) Plan.

Because you had restricted access to your funds, it is advanced that it was attributable to an error by the Credit Union which is reason to justify the waiver of the 60-day rollover requirement because the failure to waive such requirement would be against equity or good conscience under the provisions of section 402(c)(3)(B) of the Code.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount distributed to any distributee by an 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) of the Code (concerning rules applicable to rollovers from exempt trusts) provides, in part, that if any portion of the balance to the

Page 3

credit of an employee is paid to the employee in an eligible rollover distribution and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, 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)(8)(A) of the Code provides that a qualified trust means an employees' trust described in section 401(a) which is exempt from tax under section 501(a). Section 402(c)(8)(B)(i) of the Code provides, in part, that an "eligible retirement plan" includes an individual retirement account described in section 408(a).

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 subparagraph (B) of paragraph (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. A hardship exception in subparagraph (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 eligible rollover 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)(B) or 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; 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.

Information presented does not demonstrate circumstances that justify a waiver of the 60-day rollover requirement. The check you received on

Page 4

October 18, 2002, was used to purchase a residence rather than rollover the distribution into another eligible retirement plan.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount B. Thus, Amount E, which was contributed to IRA X on January 3, 2003, will not be considered a valid rollover because the 60-day requirement under section 402(c)(3) of the Code with respect to such contribution was not satisfied.

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 ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

The original of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions please contact *****, I.D. #*****, at (***) ***-****.

Sincerely yours,

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of this letter

Notice of Intention to Disclose, Notice 437