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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

20044 1035

Uniform Issue List: 402.08-00; 402.00-00

July 14, 2004

Legend:

SE:T:EP:RA:T1

Taxpayer A...

Physician M..

Amount P ....

Employer T...

Plan S...

Dear :

This is in response to a letter dated January 4, 2004, as supplemented by correspondence dated April 16, 2004, in which your authorized representative requests, on your behalf, a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B) of the Internal Revenue Code (the "Code"). The following facts and representations were submitted in support of your request.

Taxpayer A has been an employee of Employer T and participated in Plan S, a plan intended to be qualified under Code sections 401(a) and 401(k). On April 12, his employment with Employer T was terminated as a result of a disability. On August 13, Taxpayer A withdrew his account balance under Plan S, which equaled Amount P. On October 17, Taxpayer A attempted to replenish his 401(k) account. However, the custodian for Plan S refused to accept the funds because the 60-day period for rollovers had elapsed. Soon thereafter, Taxpayer A's representative filed a request that, based on the above facts and representations, the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to Amount P because the failure to waive such requirement would be against equity or good conscience. Taxpayer A has not made any rollovers to an individual retirement arrangement ("IRA") within the last year.

Code section 402(a) provides that any amount actually 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 in which distributed, under section 72 (relating to annuities).

Code section 402(c) provides the rules applicable to rollovers of distributions from plans qualified under section 401(a) to other eligible retirement plans.

Code section 402(c)(1) provides that a distribution from a qualified plan, shall not be includible in gross income 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 section 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 made for the life or life expectancy of the employee or for a period of ten years or more, (ii) required under Code section 401(a)(9), or (iii) made upon the hardship of the employee.

Code section 402(c)(8)(B) includes in its definition of an "eligible retirement plan" an IRA described in section 408.

Code section 402(c)(3)(A) provides that section 402(c)(1) shall not apply to a transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Code section 402(c)(3)(B) provides that the Secretary may waive the 60-day requirement of section 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 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 in this case indicates that, within four days after the expiration of the 60-day period, Taxpayer A attempted to repay Amount P to Plan S, but the custodian refused to accept the funds. Therefore, pursuant to Code section 402(c)(3)(B), the Service waives the 60-day rollover requirement with respect to Amount P distributed from Plan S to Taxpayer A. Taxpayer A is granted a period of 60 days from the date of this ruling letter to contribute Amount P to an IRA described in section 408. Provided all other requirements of section 402(c), except the 60-day requirement, are met with respect to such rollover contribution, Amount P will be considered a rollover contribution within the meaning of Code section 402(c)(1).

This ruling does not authorize the rollover of amounts that are required to be distributed pursuant to Code section 401(a)(9).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other Code section which may be applicable thereto.

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

Pursuant to a Power of Attorney on file with this office, an original of this letter ruling has been sent to your authorized representative.

If you wish to inquire about this ruling, please contact .

Sincerely yours,

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of letter ruling
Notice 437