



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

200445041

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00

AUG 10 2004

SE.T.E.P.A.T.2

Legend:

- Taxpayer A = *****
- Taxpayer B = *****
- Company S = *****
- Fund P = *****
- Bank C = *****
- IRA X = *****
- Account E = *****
- Individual J = *****
- Amount F = *****
- Amount G = *****
- Amount H = *****

Dear *****:

This letter is in response to a request for a private letter ruling dated May 8, 2004, submitted on your behalf by your authorized representative, as supplemented by correspondence dated June 22, 2004, July 9, 2004, July 16, 2004, and August 7, 2004, in which you request a waiver of the 60-day rollover

requirement contained in section 402(c)(3)(A) and section 408(d)(3) of the Internal Revenue Code ("Code").

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

Taxpayer A and Taxpayer B are husband and wife. Taxpayer A maintained an individual retirement arrangement, IRA X, with Company S. Taxpayer A was also a participant in Fund P. Taxpayer A represents that he was advised by Individual J to make withdrawals from his accounts so that he would have funds to support Taxpayer B's long term nursing care needs. On this advice, Taxpayer A withdrew Amount F from IRA X in May and Amount G from Fund P in October

Account documentation submitted with your request for a ruling indicate that on May 22, , Amount F was deposited into Account E, a checking account maintained by Taxpayer A at Bank C, and that on October 13, , Amount H (Amount G less withholding) was also deposited into Account E. Taxpayer A asserts that English is a tertiary language for him and that he did not understand Individual J when she advised him to withdraw "all of his funds". Taxpayer A asserts that he should have rolled these amounts over to an IRA. Taxpayer A further asserts that he has not used or spent Amount F and Amount H since they have been in Account E and that Amount F and Amount H continue to be held in Account E. Taxpayer A submitted the most recent account statement for Account E which shows an account balance far in excess of Amount F and Amount H.

Based on the facts and representations, Taxpayer A has requested that the Service waive the 60-day rollover requirement with respect to the distribution of Amount G from Fund P and the distribution of Amount F from IRA X.

With respect to the distribution of Amount G from Fund P, section 402(a)(1) 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) of the Code 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, in the manner provided under section 72 (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Code section 402(c)(1) provides, generally, that if any portion of an eligible rollover distribution from a qualified employees trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred

consists of the property distributed, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include

- (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made--
 - (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a specified period of 10 years or more,
- (B) any distribution to the extent the distribution is required under section 401(a)(9), and
- (C) any distribution which is made upon hardship of the employee.

Code Section 402(c)(8) defines eligible retirement plan as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides, generally, that section 402(c)(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.

With respect to the distribution of Amount F from IRA X, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(I) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

With respect to qualified plan distributions, section 402(c)(3)(B) of the Code, and with respect to IRAs, section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 402(c)(3)(A), 408(d)(3)(A) and 408(d)(3)(D) 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 occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) and section 408(d)(3)(I) 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) and 408(d)(3)(I), 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 submitted in this case indicates that a distribution in the amount of Amount F was made to Taxpayer A from IRA X in May , and a distribution in the amount of Amount G was made to Taxpayer A from Fund P in October , as supported by Forms 1099-R issued to Taxpayer A and submitted with his request for a ruling. Further, documentation submitted with this request for a ruling indicate that on October 13, , Taxpayer A deposited Amount F into Account E, a checking account he maintains with Bank C, and that on October 13, , he deposited Amount H into Account E. Taxpayer A asserts that had he understood Individual J's instructions he would not have withdrawn Amount F and Amount G from his retirement accounts. Taxpayer A asserts that he has not used Amount F or Amount H since these amounts have been in Account E, and that such funds continue to be held in Account E. Taxpayer A has submitted the most recent account statement for Account E showing a balance far in excess of Amount F and Amount H.

Therefore, assuming that the distribution of Amount G qualifies as an eligible rollover distribution under section 402(c)(4) of the Code, pursuant to section 402(c)(3)(B) and section 408(d)(3)(i) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount F from IRA X and Amount G from Fund P. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to rollover Amount F and Amount G to an IRA. Provided all other requirements of section 402(c)(1) and section 408(d)(3), except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of sections 402(c)(1) and section 408(d)(3).

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

The foregoing rulings do not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code.

This ruling assumes that IRA X met the requirements of Code section 408(a) at all times relevant to this transaction. This ruling further assumes that Fund P satisfies the requirements of Code section 401(a) at all time relevant to this transaction.

No opinion is expressed as to whether the distribution from Fund P qualifies as an eligible rollover distribution under Code section 402(c)(4).

These rulings are 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.

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A copy of this letter ruling is sent to your authorized representative pursuant to provisions of a Power of Attorney on file in this office.

If you have any questions, please contact *****SE:T:EP:RA:T:2.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose