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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG 17 2004

Uniform Issue List: 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A = f

Amount D = {

Amount E = f

Investment Firm V =

IRA Y =

Plan T =

Account X =

Account Y =

Circuit Court A = /

Form S =

Dear

In letters dated March 27, 2004, as supplemented by correspondence dated May 28, 2004, and July 28, 2004, and August 5, 2004, you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) 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:

Taxpayer A became entitled to a direct rollover of a distribution from her former husband's Account X in Plan T into Taxpayer A's Account Y in Plan T as a result of a Qualifying Retirement Benefits Order dated _____, issued by Circuit Court A. As a result of Circuit Court A's order, Amount D was removed from Account X and after 20 percent was withheld for federal taxes, Taxpayer A received the difference, Amount E

Taxpayer A relied upon advice received from her attorney which indicated that, pursuant to the property settlement agreement incident to her divorce, her former husband was to pay the taxes on the distribution of her awarded portion of husband's Account X balance in Plan T. But in fact, the Qualifying Retirement Benefits Order issued by Circuit Court A specified a direct rollover into Taxpayer A's existing Plan T account, Account Y.

However, unknown to Taxpayer A until shortly before she submitted this ruling request to the Internal Revenue Service, the Plan T administrator had issued a copy of a letter of instructions, and an attachment, "Waiver of Tax Notice Period for [Plan T] Civilian Account, Form S", dated _____, to Taxpayer A's former husband with copies to Taxpayer A and to Taxpayer A's attorneys, which informed Taxpayer A of certain time-sensitive elections needed in order for the Plan T administrator to comply with the terms of Circuit Court A's order. If Taxpayer A's attorney received this letter, she never discussed it with or forwarded it to Taxpayer A. In addition, Taxpayer A has represented that she never received the _____, letter. The Plan T administrator never received a response to the _____, letter and, pursuant to Plan T terms and applicable Plan T regulations, issued the net check, Amount E, described above, during October, to Taxpayer A rather than directly rolling it over to Account Y.

Thus without the benefit of Plan T's instructional letter and with confusing tax advice from her attorneys to the effect that her former husband was required to pay all taxes on the Plan T distribution, Taxpayer A did not realize that she had a 60-day deadline to meet in order to effectuate a rollover of the Plan T distribution into an individual retirement arrangement (IRA) set up and maintained in her name. It was not until Taxpayer A began working on her calendar year _____ federal income taxes that she realized she was liable for the federal taxes on the distribution which occurred as a result of the Circuit Court A order.

After many discussions with her attorneys, Taxpayer A realized she had received no correct guidance on the federal income tax consequences of her failed rollover. Subsequently on _____ Taxpayer A contributed the proceeds of the October, _____ check, Amount E, with additional personal funds such that the amounts equaled the total Plan T distribution, Amount D, into IRA Y with Investment Firm V on !

Furthermore, shortly after discovering that she had to take corrective action with respect

to the October, , Plan T distribution check, and after her attorneys proved unable to assist her, Taxpayer A sought assistance from a representative of the Internal Revenue Service. This request for letter ruling followed shortly thereafter.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D because the failure to waive such requirement would be a hardship and against equity or good conscience.

With respect to your request to waive to 60 day rollover requirement, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that 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 of the Code (relating to annuities).

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

Section 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401(a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections 401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), 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.

Section 402(c)(3)(B) of the Code provides 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.

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)(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 provided by Taxpayer A demonstrates a failure on her part to satisfy the requirements of Code section 402(c)(3)(A) which stemmed from her reliance on her attorneys to take all necessary steps to insure that all amounts issued as a result of the Circuit Court A order were directly transferred to Account Y as a tax-deferred direct rollover. Taxpayer A's attorneys provided conflicting advice which confused Taxpayer A. Taxpayer A did not either fully appreciate the language of the Circuit Court A order or the implications of her failure to roll over her Plan T distribution until she contacted the Internal Revenue Service. Furthermore, Taxpayer A did not receive documentation from the administrator of Plan T which would have advised her of the time limitations within which a rollover of a Plan T distribution must be made to an IRA.

Thus, based on the above, pursuant to Code § 402(c)(3)(B), the Service hereby waives the 60-day rollover period found in Code § 402(c)(3)(A). As a result, the Service will treat Taxpayer A's March 15, 2004, rollover contribution of Amount D into IRA Y as a valid rollover within the meaning of Code § 402(c).


This letter ruling that Plan T is qualified within the meaning of Code § 401(a). It also assumes that Taxpayer A's IRA, referenced herein, is described in Code § 408. Finally, it assumes that the Circuit Court A order referenced herein is a Qualified Domestic Relations Order within the meaning of Code § 414(p).

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 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.

If you wish to inquire about this ruling, please contact _____ I.D.
, at _____ Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

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