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

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Uniform Issue List: 402.08-00

Legend:

Individual A =

Company B =

Plan X =

Employer P =

Distribution D =

Date M =

Date N =

Date O =

Dear :

This is in response to your letter of June19, 2003, as supplemented by a letter of September 24, 2004, in which your authorized representative requested a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (Code).

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

Individual A was employed by Employer P and participated Plan X. Individual A terminated employment with Employer P. On Date M, Individual A received Distribution D in the form of stock of Employer P. Individual A received no information from Employer P with regard to the action necessary to roll over the stock into an IRA nor did Individual A receive a notice as required by section 402(f) of the Code. On Date N, Individual A met with a financial advisor of Company B concerning the stock distribution and was advised that the 60-day period for making a rollover into an IRA had expired. Individual A still has the stock he received as Distribution D.

On Date O, Individual A received a second distribution from Plan X in the form of Employer P stock. This second distribution was rolled into an IRA within 60 days from Date O.

Based on the above facts and representations you request that the Service waive the 60-day rollover requirement contained in section 402(c)(3)(B) of the Code with respect to Distribution D because the failure to waive such requirement would be against equity or good conscience.

Section 402(a) 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) 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.

Section 402(c)(1) of the Code (concerning rules applicable to rollovers from exempt trusts) provides that if (A) any portion of the balance to the credit of an employee is paid to the employee in an eligible rollover distribution, (B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and (C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, 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)(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 section 402(c)(1) shall not apply to any transfer made after the 60^{th} day following the day on which the distributee received the property distributed. Section 402(c)(3) (B) provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(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 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) 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 demonstrates that Individual A received no information from Employer P with regard to the requirements for rolling over the distribution of stock into an IRA. It was not until Individual A met with a financial advisor of Company B that he became aware of the rollover requirements with respect to distributions of stock. Individual A's inexperience in this type of financial transaction and lack of investment advice prevented Individual A from rolling over Distribution D into an IRA within 60 days

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Distribution D. Individual A is granted a period of 60 days from the date of issuance of this ruling letter to contribute the stock received in Distribution D into an IRA. Provided all other requirements of section 402(c)(3) of the Code are otherwise satisfied (except the 60-day requirement), Distribution D will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

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

If you have any questions please contact......

Sincerely yours,

/s/

Donzell Littlejohn, Manager
Employee Plans Technical Group 4