

200503032



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

U.I.L. 402.08-00

OCT 25 2004

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Legend:

- Taxpayer A = \*\*\*\*\*
- Employer M = \*\*\*\*\*
- Plan Y = \*\*\*\*\*
- State C = \*\*\*\*\*
- State B = \*\*\*\*\*
- Company L = \*\*\*\*\*
- Company R = \*\*\*\*\*
- IRA X = \*\*\*\*\*
- Company S = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Amount E = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your letter dated September 28, 2004, as supplemented by correspondence dated October 14, 2004, October 19, 2004, and October 20, 2004, in which you request 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 penalties of perjury in support of the ruling requested.

Taxpayer A resigned from employment with Employer M in June 1996 and moved from State C to State B. While employed with Employer M, Taxpayer A was a participant in Employer M's Code section 401(k) plan (Plan Y). Taxpayer A asserts that prior to relocating to State B he submitted a forwarding address to the Human Resources office of Employer M. Taxpayer A further represents that in December 2002, the parent company of Employer M, Company L, dissolved its operations, and instructed Company R to make distributions of its retirement accounts.

Taxpayer A states that in 2004, he received a letter from the Internal Revenue Service indicating that his gross income for the [REDACTED] tax year was understated by Amount E. Taxpayer A asserts that he contacted Company R and learned that a check in the amount of Amount E (Amount D less Federal withholdings) was issued to him on December 24, 2002 and mailed to his old address in State C. Taxpayer A asserts that he never received the check. Company R acknowledged that it had Taxpayer A's incorrect address on file and confirmed that the original check dated December 24, 2002 had not been cashed or otherwise negotiated. Company R reissued a check in the amount of Amount E to Taxpayer A on August 16, 2004. Documentation submitted by Taxpayer A indicates that on October 13, 2004, he deposited Amount D into a rollover individual retirement arrangement, IRA X, he maintains with Company S. Taxpayer A deposited Amount D in IRA X within 60 days from the date Company R reissued the check in the amount of Amount E. Further, Taxpayer A's request for a waiver was filed with the Service shortly after he received the reissued check from Company R.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from Plan Y.

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 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

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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 any 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 60<sup>th</sup> 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 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 distributions that occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

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) of the Code, 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 Company R issued a check to Taxpayer A on December 24, 2002 in the amount of Amount E. Documentation submitted with this request also indicates that Company R reissued the check in the amount of Amount E on August 16, 2004, after discovering that the first check was mailed to Taxpayer A's old address in State C and that the first check had never been cashed by Taxpayer A. Further, documentation submitted by Taxpayer A indicates that on October 13, 2004, deposited Amount D into IRA X, a rollover IRA he maintains with Company S to show his intent to preserve his retirement savings. The reissued check was deposited in IRA X within 60 days after the date on which Company R reissued the check.

Therefore, assuming that the distribution of Amount D qualifies as an eligible rollover distribution under Code section 402(c)(4), pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from Plan Y. Documentation submitted with this request for a ruling indicates that on October 13, 2004, Taxpayer A deposited Amount D into IRA X. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to Amount D, such amount will be considered valid rollover contribution within the meaning of Code section 402(c)(1).

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

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

This letter assumes that Plan Y satisfies the requirements for qualification under Code section 401(a) at all times relevant to this transaction. This ruling also assumes that IRA X meets the requirements of Code section 408 at all times relevant to this transaction.

No opinion is expressed as to whether the distribution from Plan B qualifies as an eligible rollover distribution under Code section 402(c)(4). This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

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If you have any questions regarding this letter, please contact  
\*\*\*\*\*SE:T:EP:RA:T2.

Sincerely yours,

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose