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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 12 2005

U.I.L. 402.08-00

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T:EP:RA:T2

Legend:

Taxpayer A = ********************

Taxpayer B = ********************

Annuity Contract X = ********************

Employer M = ********************

Plan Y = ********************

Amount D = ********************

Amount E = ********************

Dear ********************:

This is in response to your letter dated March 16, 2005, as supplemented by correspondence dated July 15, 2005, 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 your request.

On February 12, 2004, Taxpayer A took an early distribution from his former employer's plan, Annuity Contract X, in the amount of Amount D. Also in 2004, Taxpayer B, Taxpayer A's spouse, took an early distribution from Plan Y, her former employer's retirement plan in the amount of Amount E. It has been represented that Plan Y is a plan that is described as meeting the requirements for qualification under section 401(a) of the Code. It has also been represented that the distributions received by Taxpayer A and Taxpayer B from Annuity Contract X and Plan Y, respectively, are eligible rollover distributions as defined in Code section 402(c)(4).

Taxpayer A and Taxpayer B state that they took early distributions from their respective retirement plans because of financial hardship due to Taxpayer B's serious medical condition (disability) and her inability to continue working. You represent that Taxpayer B applied for Social Security Disability in 2004 but did not receive a determination until March 2005. During this interim period, Taxpayer A and Taxpayer B state that they needed the retirement funds in order to pay bills and other personal expenses. Taxpayer A and Taxpayer B further state that they sold their home in August 2004 and moved to a smaller home which reduced their expenses. Taxpayer A and Taxpayer B state that they did not use all of the withdrawn retirement funds and request permission to rollover their total respective plan distributions to other retirement accounts.

Based upon the foregoing, Taxpayer A and Taxpayer B request that the Service waive the 60-day rollover requirement with respect to the distributions of Amount D from Annuity Contract X and Amount E 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 employee's 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.

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 defined "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 of 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

(B) any distribution which is made upon hardship of the employee.

Section 402(c)(8) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a); 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).

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 distribute received the property distributed.

Section 403(b)(8)(A) of the Code provides, in relevant part, that if any portion of the balance to the credit of an employee in an annuity contract described in section 403(b)(1) of the Code is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in section 403(b)(1) of the Code, then such distribution (to the extent so transferred) will not be includible in the gross income of the employee in the taxable year that the distribution is paid.

Section 403(b)(8)B) of the Code provides, that rules similar to rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of section 403(b)(8)(A).

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day rollover 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 occur after December 31, 2001, are eligible for the waiver of under section 402(c)(3)(B).

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), 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, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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.

Taxpayer A and Taxpayer B state that they took early distributions from their respective retirement plans to pay personal obligations. The Committee Reports describing the legislative intent indicate that Congress enacted the rollover provision to allow portability between eligible retirement plans, including IRAs. Using retirement plan distributions to meet personal obligations is not consistent with the intent of the Congress to allow portability between eligible retirement plans.

Therefore, the request to waive to 60-day rollover period is denied with respect to the distribution of Amount D from Annuity Contract X and Amount E from Plan Y, and Amount D and Amount E will not be considered rollover contributions under Code section 402(c)(3)(A).

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.

This ruling assumes that Annuity Contract X meets the requirements of Code section 403(b) at all times relevant to this transaction and that Plan Y satisfies the requirements for qualification under Code section 401(a) at all times relevant to this transaction.

This ruling 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 concerning this ruling, please contact
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Sincerely yours,

(signed) JOYCE E. FLOYD
Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of letter ruling
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