

200549019



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

T:EP:BA

Legend:

- Taxpayer A = *****
- Plan X = *****
- Employer K = *****
- IRA X = *****
- Company S = *****
- Amount D = *****
- Amount E = *****
- Company B = *****

Dear *****:

This is in response to your letter dated April 20, 2005, as supplemented by correspondence dated September 1, 2005, and September 2, 2005, submitted by you, 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.

Taxpayer A was employed by Employer K and participated in Plan X during her employment with Employer K. Taxpayer A asserts that on December 26, 2003, Company B, the administrator of Plan X, began to make distributions of Plan X

account balances due to the termination of Plan X. Taxpayer A asserts that Company B issued a check to her in the amount of Amount D (Amount E less federal tax withholdings) and that the check was returned to Company B as her address on file with Employer K was her former address. Taxpayer A further asserts that she contacted Company B on April 6, 2005 to check on the status of her account and was informed that a distribution of her Plan X account balance was made to her in [REDACTED] but that the check had been returned as undeliverable because the post office did not have a forwarding address on file for Taxpayer A. When Company B received the returned check, it deposited the funds back into Taxpayer A's account in Plan X; however, a Form 1099-R was issued to Taxpayer A for tax year [REDACTED] that shows a gross distribution of Amount E. Federal income taxes were withheld from Amount E and reported to the Service.

Documentation submitted by Taxpayer A shows that she established an individual retirement arrangement, IRA X, with Company S on April 14, 2005. Company B wrote a letter to Taxpayer A dated May 16, 2005, verifying that, per her instructions, it had rolled over her Plan X account balance to the IRA she established with Company S. Company B completed the direct rollover of Taxpayer A's Plan X account balance to IRA X within 60-days from the date of the distribution. Taxpayer A asserts that she failed to complete a rollover of her Plan X account balance to an IRA within the 60-day time because she was not aware that Company B was making distributions from Plan X and that the distribution check and the Form 1099-R issued by Company B in [REDACTED] were sent to her former address.

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

Section 402(c) of the Code provides rules governing rollover of amounts from exempt trust 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 property other than money, the amount so transferred consists of property distributed, such distribution (to the extent 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 payment (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.

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).

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 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, or 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 and documentation submitted by Taxpayer A is consistent with her assertion that she failed to complete a rollover of her Plan X account balance to an IRA because she did not receive the distribution in [REDACTED] because Company B mailed it to her former address.

Therefore, 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 E from Plan X. Documentation submitted by Taxpayer A shows that she established IRA X on April 14, 2005 and that her Plan X account balance was rolled over to IRA X in May 2005. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount E will be considered rollover contribution within the meaning of section 402(c)(1) 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 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.

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

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

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions concerning this ruling, please contact
*****SE:T:EP:RA:T2.

Sincerely yours,

~~Signature~~ **Joyce E. Floyd**

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
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