



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200550041

U.I.L. 402.08-00

SEP 20 2005

SE.T.E.P.R.A.T2

Legend:

Taxpayer A = *****

Plan X = *****

Company P = *****

Amount D = *****

Amount E = *****

City L = *****

City M = *****

Dear *****:

This is in response to your letter dated April 20, 2005, as supplemented by correspondence dated August 4, 2005, and September 8, 2005, submitted on your behalf by your authorized representative, 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 participated in Plan X, a Code section 401(k) Plan, maintained by his former employer until he terminated employment with this employer on December 31, [REDACTED]. Based on the information provided, Taxpayer A did not receive a distribution of his Plan X account balance when he terminated employment in [REDACTED]. When Taxpayer A terminated his employment with his former employer, he resided in City L. Taxpayer A represents that he continued to reside in City L until October 1, [REDACTED] when he moved to City M. In

conjunction with his move from City L to City M, Taxpayer A represents that he completed a change of address form with the U.S. Postmaster requesting that his mail be forwarded to his new address in City M.

Taxpayer A asserts that he on March 14, [REDACTED] he stopped by his former residence to see if any mail had been delivered to him at that address and discovered that Company P, the administrator of Plan X, had issued a check to him on December 31, [REDACTED] in the amount of Amount D. Company P also mailed the Form 1099-R showing the distribution from Plan X to Taxpayer A at his former address. These items were not forwarded to Taxpayer A as requested on the change of address form. (Amount E is the gross amount of Taxpayer A's Plan X account balance. Amount D represents the net distribution after tax withholding). The information submitted with the check said that the reason for the distribution was on account of plan termination.

Taxpayer A asserts that he never intended to receive the distribution from his pension plan and was unaware that Plan X was being terminated. Taxpayer A also states that he was unaware that a distribution from Plan X had been made to him and that he did not learn of such until March [REDACTED]. Taxpayer A asserts that the check in the amount of Amount D is in his possession and that he has not used or otherwise cashed the check. Taxpayer A states that he missed the 60-day rollover period because the post office failed to forward his mail to him as he requested on the change of address form he completed when he moved from City L to City M. Taxpayer A submitted his request for a waiver to the Service shortly after discovering that a distribution had been made to him from Plan X.

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 his assertion that he failed to complete a rollover to an IRA within the 60-day rollover period because the distribution check in the amount of Amount D and Form 1099-R were mailed to his former residence in City L and not to his new residence in City M as requested on the change of address form filed with the post office.

Therefore, assuming that the distribution from Plan X 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 E from Plan X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount E to an IRA. 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. No opinion is expressed as to whether the distribution from Plan X qualifies as an eligible rollover distribution under Code section 402(c)(4).

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,



Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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