200442035

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 402.08-00

JUL 23 2004

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SE:T:EP:RA:T2

Legend:

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

Company B = **********

Company C = **********

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

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

Amount F = **********

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

This is in response to your letter dated June 10, 2004, as supplemented by correspondence dated July 13, 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 ("Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A states that in July she left her full-time position with Company B and shifted to a part-time position also with Company B. In connection with this move, Taxpayer A states that the Company B benefits personnel gave her forms to complete with respect to her retirement account. Taxpayer A asserts that it was her understanding that these forms would allow her to rollover her account balance to an individual retirement arrangement (IRA). Taxpayer A also asserts that it was her understanding that she could leave her retirement account intact until she elected to roll it over to an IRA.

Taxpayer A states that it was her belief that she could initiate action to roll over her retirement account at any time. Instead, on December Taxpayer A states that she received a check from Company C in the amount of Amount E. Federal income taxes in the amount of Amount F were also withheld as indicated from the Form 1099-R submitted by Taxpayer A with her request for a ruling. The total value of Taxpayer A's retirement account is Amount D (Amount E plus Amount F equal Amount D). Taxpayer A asserts that she has retained the check in her possession and has submitted a copy of the check in the amount of Amount E to support her representation that she has not cashed or otherwise used Amount E since she received the check from Company C.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D.

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 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 defines "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 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)(l)(A); and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides, generally, that section 402(c)(l) 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).

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.

In this case, a distribution in the amount of Amount D was made to Taxpayer A in tax year 2003 as supported by the Form 1099-R submitted with her request for a ruling. Taxpayer A asserts that when she changed job positions with Company B, she was under the impression that she could leave her retirement account intact until she elected to rollover such account to an IRA. Taxpayer A has

retained possession of the check in the Amount E (Amount D less Amount F) and has not cashed the check or otherwise used Amount E since it was distributed to her.

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 Company B's retirement plan. Taxpayer A is granted a period of 60 days from the date of this ruling to rollover Amount D 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, we conclude that the 60-day rollover requirement is waived and that Amount D will be considered valid rollover contribution within the meaning of Code section 402(c)(1).

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 the retirement plan maintained by Company B and in which Taxpayer A participated satisfies the requirements for qualification under the Code at all times relevant to this transaction.

No opinion is expressed as to whether the distribution received by Taxpayer A 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.

If you have any questions regarding this letter, please contact ********** SE:T:EP:RA:T:2.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose