TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Uniform Issue List: 402.08-00

T:EP:RA:UK

Legend:

Individual A =

Insurance Company B =

Plan X =

Employer P =

Amount D =

Date M =

Dear

This letter is in response to your letter of February 10, 2003, requesting that we waive the 60-day rollover requirement under section 402(c)(3)(B) of the Internal Revenue Code with respect to your distribution from your employer's (Employer P) section 401(k) plan.

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

Individual A had participated in Employer P's 401(k) arrangement, Plan X, with Insurance Company B. Individual A terminated employment with Employer P. Individual A took a total distribution of the balance to the credit under the plan of Amount D on Date M after attaining age 55 and after separating from service. Individual A had intended to roll over Amount D into an IRA with a different type of investment than Plan X.

Individual A's husband

he died in early 2003.

As a result of the effects of the husband's illness, the extensive treatments for such, and the extensive stress undergone by Individual A, Individual A did not redeposit Amount D into an IRA within 60 days of Date M.

Individual A requests a ruling that the Service waive the 60-day rollover requirement because the failure to waive such requirement would be against equity or good conscience under the provisions of section 402(c)(3)(B) of the Code.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount distributed to any distributee by an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distribute, in the taxable year of the distributee in which distributed section 72 (relating to annuities).

Section 402(c) of the Code (concerning rules applicable to rollovers from exempt trusts) provides, in part, that if any portion of the balance to the credit of an employee is paid to the employee in an eligible rollover distribution and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(a)(8)(A) of the Code provides that a qualified trust means an employees' trust described in section 401(a) which is exempt from tax under section 501(a). Section 402(a)(8)(B)(i) of the Code provides, in part, that an "eligible retirement plan" includes an individual retirement account described in section 408(a).

Section 402(c)(3) of the Code provides that the transfer must be made within 60 days of receipt. In general, section 402(c)(3)(A) provides that subparagraph (B) of paragraph (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. Subparagraph (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 eligible rollover distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

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) or 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; 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.

Individual A received an eligible distribution from a 401(k) plan. Information presented demonstrates extraordinary circumstances caused by the stress Individual A experienced during her husband's terminal illness, and indicates that the Individual A could not reasonably satisfy the requirement that Amount D be deposited in an IRA within 60 days of the distribution from Plan X. The failure to deposit Amount D into an IRA within the 60-day period was beyond the reasonable control of Individual A, and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount D. Individual A is granted a period of 60 days from the date of issuance of this ruling letter to contribute an amount up to Amount D in cash to an IRA, provided all other requirements of section 402(c) of the Code are otherwise satisfied (except the 60-day requirement). If these conditions are satisfied, Amount D will be considered a rollover constitution with the meaning of section 402(c) of the Code for the 2002 taxable year.

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.

If you have any questions please contact....

Sincerely yours,

/s/ Donzell Littlejohn

Donzel Littlejohn, Manager
Employee Plans Technical Group 4