200424005

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 402.08-00

MAR 1 5 2004

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Legend:

Taxpayer A	=	********************
Decedent B	=	********************
Plan X	=	********************
Amount C	=	********************
Amount D	=	********************
Company M	=	********************
Bank R	=	********************
Account S	=	********************
Company P	=	********************
IRA Y	=	********************

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

This is in response to your letter dated September 10, 2003, as supplemented by letters dated December 8, 2003, and February 18, 2004, in which you request, through your authorized representative, 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 circumstances have been submitted under penalty of perjury in support of the ruling request:

Taxpayer A's husband, Decedent B, died on At the time of his death, Decedent B was a participant in Plan X, a qualified retirement plan described in section 401(a) of the Code.

With the assistance of her brother-in-law, Taxpayer A applied for a distribution of Decedent B 's account in Plan X. Based on her brother-in-law's advice, Taxpayer A intended to roll over the distribution from Plan X to an individual retirement arrangement (IRA) in a tax-free rollover as described in section 402(c)(1) of the Code. In a letter dated February 18, your authorized representative asserted that Taxpayer A is the sole beneficiary of Decedent B's entire interest in Plan X.

The administrator of Plan X distributed the balance of Decedent B's Plan X account in two portions: (1) a check in the amount of Amount C which represented Decedent B's interest in pooled investment vehicles, and (2) a stock certificate representing Decedent B's shares of Company M's common stock.

In early April , Taxpayer received a check in the amount of Amount C from Plan X. Not wanting to leave the check unattended while she was out of town, Taxpayer A, on April 14, deposited Amount C into Account S, a regular savings account, she and Decedent B maintained with Bank R. Documentation submitted with your request for a ruling indicates that Amount C continuously remained in Account F from April 14, to July 31, To show her good faith and intent to complete a tax-free rollover, Taxpayer A withdrew Amount C from Account S and, on July 31, , established IRA Y, a rollover IRA, at Company P.

Taxpayer A received a stock certificate dated April 8, from Plan X which represented Decedent B's shares of Company M's common stock. Taxpayer A retained the stock certificate in her possession until August 20, . Documentation submitted with your request for a ruling indicates that Taxpayer A, to show her good faith and intent to complete a tax-free rollover, deposited the stock certificate into IRA Y on August 20, Amount D represents the value of the stock on August 20, Taxpayer A represents that she did not negotiate or otherwise use Amount D prior to contributing it to IRA Y.

Your authorized representative has asserted that Decedent B died suddenly and that, as a result of his death, you were thrust into a position of handling Decedent B's estate and related financial affairs. Your authorized representative also asserts that you have limited experience in financial matters, and in particular, technical tax-related matters, such as qualified retirement plan rollovers.

Based on these facts and representations you request the following ruling:

> That the Service waive the 60-day rollover requirement with respect to the distribution of Amount C and Amount D from Plan X.

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, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Code section 402(c)(2) 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)).

Code section 402(c)(4) defines "eligible rollover distribution" as any distribution to the employee of all or a portion of the balance to the credit of the 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 such 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 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)(9) of the Code provides that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer 12 provides, generally, that if a distribution attributable to an employee is paid to the surviving spouse of the employee after the employee's death, section 402(c) of the Code applies in the same manner as if the spouse were the employee. Therefore, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and section 402(c)(4) and applicable regulations.

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 occurred 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 (January 27, 2003), provides that in determining whether to grant a wavier 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.

The information presented by Taxpayer A indicates that she is the surviving spouse of Decedent B and is the sole beneficiary of Decedent B's entire interest in Plan X.

Documentation submitted with the ruling request further demonstrates that Taxpayer A received two separate distributions from Plan X in the amount of Amount C and Amount D. Account statements issued to Taxpayer A by Bank R indicate that Amount C was deposited into Account S shortly after its receipt by Taxpayer A and that such amount remained in Account S until Taxpayer A withdrew Amount C on July 31, . Based on additional information submitted on Taxpayer A's behalf, it shows that Taxpayer A, on July 31, to show her good faith and intent to make a tax-free rollover, established IRA Y, a "rollover" IRA, at Company P and that she contributed Amount C to that IRA. The stock certificate representing Decedent B's shares of common stock remained in Taxpayer A's possession from April, until August . You have asserted that while the stock certificate was in your possession you did not deposit it, negotiate it, or otherwise use it for any reason. To show your good faith and intent to complete a tax-free rollover, on August 20, , Amount D (the value of the Decedent's stock on that day) was also contributed to IRA Y. The information submitted indicates that the reason for failure to comply with the 60-day requirement was due to the sudden death of Decedent B and the burden you encountered in handling his estate and other financial matters. Your request for this ruling was submitted to the Service shortly after you contributed Amount C and Amount D to IRA Y.

Therefore, pursuant to section 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount C and Amount D from Plan X. On July 31, , Taxpayer A established IRA Y, a rollover IRA, with Company P and contributed Amount C to IRA Y. On August 20, , Taxpayer A contributed Amount D (the value of Decedent B's shares of Company M's common stock) to IRA Y. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to these contributions, we conclude that the 60-day rollover requirement is waived and that Amount C and Amount D will be considered rollover contributions within the meaning of section 402(c)(1) of the Code.

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

This ruling assumes that Plan X meets the qualification requirements of Code section 401(a) and that IRA Y meets the requirements of Code section 408(a) at all times relevant to this transaction.

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 letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

We have sent a copy of this letter to your authorized representative pursuant to a Form 2848 (power of attorney) on file with our office.

If you wish to inquire about this ruling, please contact ************************************, SE:T:EP:RA:T2 ******************.

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