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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG - 5 2004

Uniform Issue List: 408.03-00

T:EP:RA:UK:TH

Legend:

- Company A =
- Company B =
- Amount E =
- Plan X =

- IRA Y =

Dear

In a letter dated ***** your authorized representative requested 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 penalty of perjury in support of the ruling requested:

On ***** you were forced to leave your employment at Company A due to your severe health problems and resulting required treatments. You were a participant in Plan X maintained by Company A. Company A provides a disability program underwritten by Company B. You did not retire in ***** but received certain disability payments from Company B. After ** months of disability, in the

year *****you qualified for benefits under Company A's long-term disability plan which is also underwritten by Company B. In December *****Company A required you to retire since you were over age **and permanently disabled. You elected to receive a total distribution of your retirement account in Plan X at that time. You rolled over the distribution into IRA Y, maintained by Company A's credit union. At the time of the rollover, your financial adviser at the credit union contacted Company B concerning the effect of the distribution on your disability income from Company B. Company B informed your advisor that the rollover of your retirement benefits to an IRA would not jeopardize your disability benefits.

In *****Company A informed you that you were due an additional benefit of Amount E from your account in Plan X. Since you had already received a benefit from Plan X, you were required under Plan X to receive an immediate distribution. During *****you received Amount E. This residual benefit was a small amount in comparison to your previous distribution. You received tax information with regard to the distribution of Amount E from Company A, but you were not informed at that time of the effects that a failure to rollover Amount E would have upon your disability benefits. You did not roll over Amount E but placed the funds in a savings account where Amount E remains intact and has not been used for any purpose. In *****Company B terminated your disability payments. You became aware, for the first time, after a conversation with an employee of your credit union at Company A, that there was a rule that would terminate your disability benefits upon your receipt of and failure to roll over any distribution from Plan X. You contacted your financial adviser at Company A's credit union and learned that you had missed the 60-day rollover period.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount E because the failure to waive such requirement would be against equity or good conscience.

Section 402(a) of the Code provides, in general, that any amount actually distributed to any distributee by any employees' trust described in section 401(a) 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, under section 72 (relating to annuities).

Section 402(c) of the Code provides rules applicable to rollovers from exempt trusts. In general, section 402(c) (1) provides that if an eligible rollover distribution is transferred to an eligible retirement plan, such as an IRA, the distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(4) provides that the term "eligible rollover distribution" means any distribution to an employee of all or any 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 life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a period of ten 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 the hardship of the employee.

Section 402(c)(3)(A) of the Code requires that an eligible rollover distribution from a qualified retirement plan must be transferred to an eligible retirement plan no later than the 60th day after the day of receipt in order to avoid having to include that distribution in the distributee's gross income for that year.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience.

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), 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 you presented demonstrates that because of confusion that resulted from information provided to you by Company A's credit union financial adviser and by Company B concerning the effects of the rollover of Amount E upon your disability benefits, you placed Amount E in a savings account. These circumstances contributed to your not rolling over Amount E into an IRA.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount E. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount E, in cash, into an IRA. Provided all other requirements of section 402(c) of the Code (except the 60-day rollover requirement) are met with respect to such contribution,

Amount E will be considered a rollover contribution within the meaning of section 402(c) 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 that may be applicable hereto.

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

If you have any questions regarding this ruling, you may contact *****

Sincerely yours,

JSI

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter