



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200502052

OCT 15, 2004

SE: T: EP: RA: T4

Uniform Issue List: 402.08-00

Legend:

- Individual A =
- Plan X =
- Employer P =
- Amount D =
- Amount E =
- Date L =
- Date M =
- Date N =
- Country Q =
- Country R =

Dear [REDACTED]

This letter is in response to your letter dated June 18, 2003, in which you request a waiver of the 60-day rollover requirement contained in section 402(c) 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:

Individual A was a participant in Plan X sponsored by Employer P. Individual A who was working in Countries Q and R as a consultant for Employer P from Date L to Date N previously had terminated employment with Employer P and had requested a distribution from Plan X. Employer P made a distribution under Plan X of Amount D on Date M directly to Individual A's United States bank account. Individual A intended to roll over a portion of Amount D, Amount E, into an IRA. However, because Individual A was working in Country R, [REDACTED], he was not able to complete the rollover during 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 Amount E because the failure to waive such requirement would be against equity or good conscience.

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 distributee, in the taxable year of the distributee in which distributed under section 72 of the Code (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 in a qualified trust 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 section 402(c)(1) shall not apply to any transfer of a distribution made after the 60<sup>th</sup> day following the day on which the distributee received the property distributed. Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(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), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a

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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 demonstrates that Individual A was in a war zone and was not able to complete the rollover until after the 60-day rollover period had expired.

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 date of issuance of this ruling letter to contribute an amount up to Amount E in cash to an IRA. Provided all other requirements of section 402(c) of the Code are otherwise satisfied (except the 60-day requirement), 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, which may be applicable thereto.

This letter 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 about this ruling please contact [REDACTED] I.D. # [REDACTED] at [REDACTED].

Sincerely yours,

SL  
Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:  
Deleted copy of this letter  
Notice of Intention to Disclose, Notice 437