

200549017



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

SEP 12 2005

U.I.L. 402.08-00

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Legend:

- Taxpayer A = \*\*\*\*\*
- Taxpayer B = \*\*\*\*\*
- Plan X = \*\*\*\*\*
- Plan Y = \*\*\*\*\*
- Employer M = \*\*\*\*\*
- Distribution Form G = \*\*\*\*\*
- Distribution Form H = \*\*\*\*\*
- Company K = \*\*\*\*\*
- IRA Z = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Amount E = \*\*\*\*\*
- Account J = \*\*\*\*\*

Dear \*\*\*\*\*:

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This is in response to your letter dated February 8, 2005, as supplemented by correspondence dated May 20, 2005, June 8, 2005, June 13, 2005, June 28, 2005, and July 5, 2005, submitted on your behalf by your authorized representative, in which you request 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 penalties of perjury in support of your request.

Taxpayer A was employed by Employer M. During her employment with Employer M, Taxpayer A participated in Plan X and Plan Y. Plan X is a Code section 401(k) plan and Plan Y is an employee stock option plan. Upon her termination of employment with Employer M on May 3, [REDACTED] Taxpayer A completed Distribution Form G on which she elected to have her account balance in Plan X paid in a direct rollover to IRA Z, an individual retirement arrangement she maintains with Company K. At the same time, Taxpayer A completed Distribution Form H on which she elected to have Plan Y account balance paid directly to her in a lump sum subject to Federal Income Tax Withholding. Distribution Form H also provides that distributions from Plan Y can be made in a direct rollover to an IRA. Based on Taxpayer A's election, the trustee of Plan Y made a lump sum distribution to her on May 28, [REDACTED] in the amount of Amount E. (The gross amount of Taxpayer A's distribution from Plan Y was Amount D. Amount E is the net amount of such distribution, less Federal and state income tax withholding).

Documentation submitted with this request indicates that on June 6, [REDACTED], Taxpayer A deposited Amount E into Account J, a liquid fund asset account she maintains at Company K with her spouse, Taxpayer B. Account J is not an IRA. Taxpayer A states that she was not aware that her election to take a lump sum distribution from Plan Y resulted in adverse tax consequences until she was notified by the Service that she failed to include Amount E in her gross income for tax year [REDACTED]. Amount E remains deposited in Account J.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from Plan Y.

Section 402(c) of the Code provides rules governing rollover 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

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property distributed, such distribution (to the extent 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 any 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 payment (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)(1)(A); and (vi) an annuity contract described in section 403(b).

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

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).

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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 financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of 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 Service has the authority to waive the 60-day rollover period for a distribution from a qualified plan where the employee failed to complete a rollover to another eligible retirement plan within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example, errors committed by a financial institution, hospitalization, postal error, and disability.

Based on the facts submitted in this case, in May [REDACTED] Taxpayer A made an affirmative election to receive her Plan Y account balance in the form of a lump sum distribution, which she deposited into Account J, a non-retirement account in June [REDACTED]. Taxpayer A states that she mistakenly elected to take a lump sum distribution of her interest in Plan Y even though the direct rollover option was available on Distribution Form H. No documentation has been submitted to demonstrate that Taxpayer A ever attempted to rollover Amount E to another eligible retirement plan but was prevented from doing so because of one of the factors in Revenue Procedure 2003-16. Rather, information presented by Taxpayer A demonstrates that the ability to deposit Amount E into an IRA within the 60-day rollover period was within the reasonable control of Individual A. Amount E has been out of retirement savings for more than three years.

Therefore, with respect to your ruling request, we conclude that, pursuant to Code section 402(c)(3)(B), the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount E from Plan Y, and thus Amount E will not be considered a valid rollover contribution under section 402(c)(1) because the 60-day requirement was not satisfied.

No opinion is expressed as to the tax treatment of the transactions 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.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

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If you have any questions concerning this ruling, please contact  
\*\*\*\*\*SE:T;EP:RA:T2.

Sincerely yours,

~~JOYCE E. FLOYD~~

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling  
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