



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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T:EP:RA:TA

MAY - 3 2006

U.I.L: 402.08-00

Legend:

Taxpayer A = *****
Taxpayer B = *****
Bank M = *****
Plan X = *****
Amount D = *****
Amount E = *****
Amount F = *****
IRA Y = *****
Company B = *****
Account G = *****

Dear *****

This is in response to your letter dated March 17, 2006, as supplemented by correspondence dated April 11, 2006, April 17, 2006, and April 20, 2006, 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 ("Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A states that he maintained Plan X, which he describes as a Code section 403(b) plan, with Bank M. Taxpayer A further states that upon his retirement on June 26, 2004, he requested a rollover of all retirement funds held on his behalf. Taxpayer A's retirement funds consist of cash and shares of Bank M stock. Documentation submitted by Taxpayer A shows that on August 26, 2004, he completed Bank M's direct disbursement rollover request form to direct distribution of his retirement funds.

The instructions for the direct disbursement rollover request form asks the participant at Section II to check the box which indicates how the participant would like to have the distribution processed. Under Section II of the form, Taxpayer A checked the box indicating that he requested Bank M to make a "direct rollover of his entire distribution into an IRA, Qualified Plan, Section 403(b) Plan or Governmental 457 Plan as detailed in Section III".

The instruction for the disbursement form instructs the participant, at Section III, to complete the information requested for distribution checks that will be sent directly to a qualified plan trustee/custodian or IRA. Section III, entitled "INSTRUCTIONS TO DIRECT ROLLOVER INTO AN IRA OR QUALIFIED PLAN", was completed by Taxpayer A wherein he directed that his distribution be transferred to an individual retirement arrangement, IRA Y, at Bank M. The cash portion of Taxpayer A's retirement funds, Amount F, was transferred in a direct rollover to IRA Y at Bank M.

The instructions for the disbursement form instructs the participant, at Section IV, to complete this section if shares of Bank M stock are to be electronically transferred to the participant's brokerage account. Section IV of Bank M's distribution form applies to company stock, if applicable, and states that such shares, which the participant has requested to receive in-kind, may be electronically transferred to the participant's brokerage account. The instructions further ask the participant to name the brokerage institution, provide the account name, and the account number into which such shares should be transferred. Taxpayer A completed Section IV and instructed Bank M to transfer his shares of stock to Account G, a joint brokerage account Taxpayer A maintains, along with Taxpayer B, at Company B. Documentation submitted by Taxpayer A shows that Bank M stock valued at Amount E was transferred to Account G on October 22, 2004.

Taxpayer A received a Form 1099-R for tax year _____ that shows that he received a total distribution in the amount of Amount D (the sum of Amount E and Amount F) from Plan X. The Form 1099-R describes Taxpayer A's entire distribution from Plan X as "G", which, pursuant to the form instructions, means "direct rollover".

Taxpayer A states that he discovered that a portion of his retirement funds, specifically, Amount E (the shares of Bank M stock) was not in an IRA in January

2006. Taxpayer A asks the Service to waive the 60-day rollover requirement so that he can roll Amount E into an IRA.

Based on the facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount E 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 employees 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, such distribution (to the extent so 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 an 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 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 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 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 60th 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).

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)(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.

In this case, documentation submitted by Taxpayer A indicates that he directed to have a portion of his retirement funds (Amount F) transferred in a direct rollover from Plan X to IRA Y. Documentation submitted by Taxpayer A also shows that he directed to have his shares of Employer M (Amount E) stock electronically transferred to Account G, his brokerage account at Company B. Account G is not an IRA. From the documentation submitted by Taxpayer A, it appears that he made a mistake when he completed Bank M's disbursement form that resulted in his shares of Bank M stock being transferred to a non-IRA account.

The Service has the ability 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, postal error, errors committed by a financial institution, hospitalization, disability, and events beyond the reasonable control of the

individual. Although there appears to have been a misunderstanding as to how to complete the disbursement form, the ability to deposit Amount E into an IRA within the 60-day rollover period was within the reasonable control of Taxpayer A.

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 period with respect to the distribution of Amount E from Plan X, and thus, Amount E will not be considered a valid rollover distribution under section 402(c)(1) because the 60-day rollover 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 who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a valid Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact
*****SE:T:EP:RA:T:2.

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