Uniform Issue List: 402.08-05

20050802 7

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 30 2004

SE:T:EP:RA:T4

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Legend:

Individual A	=	*********************
Individual B	=	***********************
Fund X	=	************************* ***************** ***************
Distribution C	=	$********************************
Fund Y	=	*********************** ********************** *******************
Distribution D	=	$**********************************
Distribution E	=	$*************************************
Net Distribution	=	$**************************************

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

This is in response to a request submitted on behalf of Individual B by her authorized representative by letter dated October 2, 2003, for a ruling to waive the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code"). The request was supplemented with a letter dated February 20, 2004, from the authorized representative.

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

Individual B was married to Individual A for ** years and filed a joint tax return with him until his death on **************. Upon his death, Individual A's interest in Fund X and Fund Y inured to Individual B as his surviving spouse and beneficiary.

When Individual B talked with representatives of the retirement funds, it was explained that should she decide not to roll over her distributions, the trustees were required to withhold 20 percent of the distribution for income taxes. However, no tax would be withheld if roll over the entire amount into an IRA, but her access to the funds would be taxable at the regular rate when withdrawn from the IRA. It was her misunderstanding that once the 20 percent tax was withheld she would not owe any other taxes. It was also explained to her that some of the funds could be received in the form of a lifetime monthly benefit but that these distributions could not commence until she attains age 55, which was seven years later.

It is represented that the document furnished to Individual B by the funds conformed to the rollover notice requirements of section 402(f) of the Code. On June 10, 2002, Individual B signed an application indicating that she did not want Federal income tax withholding, other than the mandatory 20% withholding. On the same date, Individual B indicated that she wanted to receive all amounts due her in a lump sum, and she did not wish to have amounts due to her to be directly rolled over into an IRA or other qualified plan.

This money was distributed to Individual B as follows:

On April 5, 2002, Individual B received Distribution D from Fund Y. On or about June 20, 2002, Individual B received Distribution C from Fund X, and Distribution E from Fund Y.

When Individual B went to a local tax preparation service in March of 2003, she was informed that the entire distribution was subject to Federal income tax and that substantial additional tax was due. Individual B sought professional advice including the possibility of a ruling to have the 60-day rollover period extended.

During a telephone conference held on October 14, 2004, Individual A and her authorized representative contended that as an immigrant she had no experience with taxes and that you understood that the 20 percent withholding tax would satisfy all of your tax obligations. Individual A did not confer with an accountant or professional advisor.

The following ruling is requested on behalf of Individual B:

As surviving spouse, Individual B requests a waiver of the 60-day rollover period in order to roll over most or all of the proceeds of Distributions C, D and E into an individual retirement account described in section 408 because the failure to waive such requirement would be against equity or good conscience under the provisions of section 402(c)(3)(B) of the Code.

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 (relating to annuities).

Section 402(c) of the Code (concerning rules applicable to rollovers from exempt trusts) provides, in part, that (A) if any portion of the balance to the credit of an employee is paid to the employee in an eligible rollover distribution and (B) 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(c)(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(c)(8)(B)(i) of the Code provides, in part, that an "eligible retirement plan" includes an individual retirement account described in section 408(a).

In general, Code section 402(c)(3)(A) provides that subparagraph (B) of paragraph (1) shall not apply to any transfer of a distribution made after the 60^{th} day following the day on which the distributee received the property distributed. Subparagraph (B) of Code section 402(c)(3) 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 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 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B) or 408(d)(3)(I), 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.

Information presented does not demonstrate circumstances that would justify a waiver of the 60-day rollover period under section 402(c)(3)(B) of the Code. Initially, Individual B signed paperwork on or about June 10, 2002, which indicated that she may have been liable to pay Federal income tax on the Fund X and Fund Y distributions in addition to the mandatory 20 percent withholding. On said paperwork, Individual B indicated that she did not want any Federal income tax (other than the mandatory 20 percent withholding) withheld from her distribution(s) from Funds X and Y. Thus, contrary to Individual B's assertion, the paperwork indicated that additional Federal income taxes may have been due and payable on her distributions.

Additionally, on or about June 10, 2002, Individual B indicated that she wanted to receive all amounts due her from Funds X and Y in a lump sum, and that she did not wish to have any of said amounts directly rolled over into an IRA or other eligible retirement plan. Upon receipt, Individual B did not roll over, and to date has not rolled over, any portion of said distributions into an IRA. Individual B has not offered the Service any reason why she missed the statutory 60-day deadline, and, as noted above, her reason for now requesting an extension of the 60-day rollover period is contravened by documentation that she signed on or about June 10, 2002. It was only after her tax preparer advised her of what additional Federal taxes she, in fact, did owe, that Individual B decided to roll over her Fund X and Y distributions.

Under the facts of this case, the Service declines to extend the 60-day rollover period mandated by Code section 402(c)(2)(A).

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 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.

The original of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions please contact *************************, at (***) ***-****.

Sincerely yours,

Donzell Littlejohn

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

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