



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200510033

DEC 16 2004

U.I.L. 402.08-00

*SB:T:EP:PA:T2*

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Legend:

- Taxpayer A = \*\*\*\*\*
- Employer M = \*\*\*\*\*
- Plan X = \*\*\*\*\*
- Custodian D = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- IRA Z = \*\*\*\*\*
- Account H = \*\*\*\*\*
- Shares Y = \*\*\*\*\*

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

This is in response to your letter dated April 14, 2004, which was received in our office on September 7, 2004, 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"). Your request is supplemented by correspondence to our office dated September 22, 2004, October 27, 2004, November 30, 2004, and December 11, 2004.

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

Taxpayer A, prior to his retirement on [REDACTED], was a participant in Plan X, a retirement plan sponsored by Employer M. Custodian D is the custodian of Plan X. On [REDACTED] Taxpayer A decided to close his account in Plan X with the intention of rolling it over to an individual retirement arrangement (IRA). Documentation submitted by Taxpayer A indicates that on [REDACTED] Taxpayer A established IRA Z, a rollover IRA, with Custodian D. Taxpayer A's Plan X account consisted of cash in the amount of Amount D and Shares Y. Account statements indicate that on [REDACTED], Amount D was transferred from Plan X to IRA Z. Taxpayer A asserts that a stock certificate representing Shares Y was sent to him by Custodian D for his signature so that Shares Y could then be added to IRA Z. Taxpayer A asserts that he signed the stock certificate and returned it to Custodian D for deposit in IRA Z. Taxpayer A further asserts that upon receipt of the stock certificate, Custodian D did not deposit Shares Y in IRA Z, but rather deposited Shares Y in Account H, a regular investment account Taxpayer A also maintains with Custodian D. Documentation submitted by Taxpayer A indicates that on [REDACTED] Shares Y were deposited into Account H.

Taxpayer A states that in early [REDACTED] he discovered that Shares Y had not been rolled over to IRA Z but had been deposited in Account H. Correspondence submitted by Taxpayer A indicates that he contacted Custodian D upon discovering the mistake but was informed by Custodian D that it could not transfer Shares Y to IRA Z because the 60-day rollover period had expired. Taxpayer A filed his request for a waiver of the shortly after being informed by Custodian D that it could not transfer Shares Y to IRA Z. Taxpayer A further states that he has not redeemed, negotiated, or otherwise used any of Shares Y since they have been in Account H. Taxpayer A submitted copies of monthly statements for Account H since [REDACTED] that show that Shares Y continue to be held in that account.

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

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 a distribution was made from Plan X in [REDACTED]. Further, documentation submitted by Taxpayer A indicates that he established IRA Z, a rollover IRA, with Custodian D on [REDACTED] and that on [REDACTED] Amount D, an amount that represents the cash portion of Taxpayer A's Plan X account balance was transferred from Plan X to IRA Z. Taxpayer A asserts that when returned the signed stock certificate to Custodian D that represented Shares Y, he assumed that Shares Y would also be deposited into IRA Z. Taxpayer A discovered that Shares Y had not been rolled over to IRA Z as he intended, but rather had been deposited by Custodian D into Account H, a regular investment account Taxpayer A also maintains with Custodian D. Taxpayer A asserts that he has not used, negotiated, redeemed or otherwise used any of Shares Y since they have been held in Account H and has submitted monthly account statements for Account H since [REDACTED] (the month in which Shares Y were deposited in Account H) that support that Shares Y continue to be held in Account H.

Therefore, assuming that the distribution of from Plan X qualifies as an eligible rollover distribution under Code section 402(c)(4), pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Shares Y from Plan X. Taxpayer A is granted a period of sixty days from the date of this ruling to contribute Shares Y to an IRA. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to such contribution, we conclude that the 60-day rollover requirement is waived and Shares Y will be considered a valid rollover contribution within the meaning of Code section 402(c)(1).

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code.

This letter assumes that Plan X satisfies the requirements for qualification under Code section 401(a) at all times relevant to this transaction. This ruling further

assumes that IRA Z meets the requirements of Code section 408(a) at all times relevant to this transaction.

No opinion is expressed as to whether the distribution from Plan X qualifies as an eligible rollover distribution under Code section 402(c)(4).

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.

If you have any questions regarding this letter, please contact

\*\*\*\*\*SE:T:EP:RA:T2.

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