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

SEP 15 2005

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List 408.03-00

*T:EP:RA:UK*

Legend

Taxpayer A =

Plan X =

Account A =

Employer M =

Amount A =

Amount B =

Amount C =

Amount D =

Amount E =

Dear :

This is in response to a ruling request dated March 6, 2004, as supplemented by additional correspondence dated May 25 and January 25, 2005, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code").

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

Taxpayer A was a participant in Plan X, a 401(k) plan maintained by Employer M. In July 2003, Taxpayer A retired from Employer M for medical reasons. On October 6, 2003, Amount A was distributed to Taxpayer A from Plan X in a total distribution. Amount B was withheld for federal income tax purposes. On October 22, 2003, Amount C (Amount A less Amount B) was deposited into Account A, Taxpayer A's checking account held jointly with his spouse.

Taxpayer A received the distribution from Plan X while being treated for leukemia and for bi-polar disorder. Since October 2003, Taxpayer A's treatment for these medical and emotional conditions impaired his judgment to make financial decisions, including rolling Amount E over to another IRA. The medications he took for these medical conditions caused him to endure several side effects which rendered him unable to care for himself. The rollover oversight was discovered in January 2004, by Taxpayer A's spouse, upon receipt of the 2003 year end financial information, including a Form 1099-R from Plan X.

While waiting for a decision from the Social Security Administration on his application for permanent disability status and during the processing of this ruling, Taxpayer A used Amount D for personal expenses. Permanent disability status was granted by the Social Security Administration in May 2004.

Based on the above facts and representations, you request that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to Amount E (Amount A less Amount D) because the failure to waive such requirement would be against equity or good conscience.

Code section 402(a) provides that any amount actually 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 in which distributed, under section 72 (relating to annuities).

Code section 402(c) provides the rules applicable to rollovers of distributions from plans qualified under section 401(a) to other eligible retirement plans.

Code section 402(c)(1) provides that a distribution from a qualified plan shall not be includible in gross income if—

(A) all or 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,

(B) the distributee transfers any portion of the property received to an eligible retirement plan, and

(C) in the case of a distribution of property other than money, the transfer consists of the property distributed.

Code section 402(c)(4) defines an "eligible rollover distribution" as a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term does not include any distribution that is: (i) one of a series of substantially equal periodic payments made for the life or life expectancy of the employee or for the joint lives or joint life expectancies of the employee and the employee's designated beneficiary, or for a specified period of ten years or more, (ii) required under Code section 401(a)(9), or (iii) made upon the hardship of the employee.

Section 402(c)(8)(B) of the Code 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 section 401(a) of the Code qualified retirement plan, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides that section 402(c)(1) shall not apply to a 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 of section 402(c)(3)(A) in "hardship" situations where 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.

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 Code 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, 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 in this case indicates that Taxpayer A was being treated for medical and emotional conditions which prevented him from satisfying the 60-day rollover requirement. Therefore, pursuant to Code section 402(c)(3)(B), the Service waives the 60-day rollover requirement with respect to Amount E. Taxpayer A is granted a period of 60 days from the date of this ruling letter to contribute up to Amount E to one or more eligible retirement plans described in section 402(c)(8)(B). Provided

rollover requirement. Therefore, pursuant to Code section 402(c)(3)(B), the Service waives the 60-day rollover requirement with respect to Amount E. Taxpayer A is granted a period of 60 days from the date of this ruling letter to contribute up to Amount E to one or more eligible retirement plans described in section 402(c)(8)(B). Provided all other requirements of section 402(c), except the 60-day requirement, are met with respect to such rollover contribution, Amount E will be considered a rollover contribution within the meaning of section 402(c)(1).

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent.

If have any questions, please contact

Sincerely,



, Manager  
Employee Plans Technical Group 1

Enclosures:  
Deleted Copy of this Letter  
Notice of Intention to Disclose, Notice 437