

200406051



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

NOV 12 2003

Uniform Issue List: 408.03-00

T:EP:BA:T4

Legend:

Taxpayer =

Plan A =

Plan Administrator =

Amount E =

Amount F =

Amount G =

Amount H =

County B =

Month V =

Date W =

Month X =

Date Y =

Month Z =

IRA =

Dear Taxpayer:

This letter is in response to a ruling request submitted by you dated _____, in which you request a waiver of the 60-day rollover requirement contained in

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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:

You are a retired employee of County B and a participant in Plan A, a section 457 plan. In Month V, you received a Form 1099-R for 2002 in the mail from the Administrator of Plan A indicating a total distribution of Amount E, with federal tax withholding of Amount F, and state tax withholding of Amount G. You had not applied for retirement benefits and you expected to begin receiving required distributions from Plan A in Month Z when you reached 70½ years of age. The Administrator issued a distribution check of Amount H (Amount E less Amounts F and G) in 2002, but you never received it. You immediately contacted the Plan Administrator when you received the Form 1099-R. On Date W, the Plan Administrator issued a replacement check in Amount H that you received in Month X. You rolled cash representing Amount E into an Individual Retirement Arrangement (IRA) on Date Y. This deposit was made more than 60-days from the date of the original distribution but less than 60-days from the date the replacement check was issued to you. .

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

Section 457(a)(2) of the Code provides that, to the extent provided in section 72(t)(9) of the Code, section 72(t) shall apply to any amount includible in gross income under this subsection.

Section 457(e)(16) of the Code states that, in general, rollovers from a section 457 eligible deferred compensation plan are subject to the rules set-forth in section 402(c) of the Code, subparagraphs (2) through (7) and (9), and section 402(f).

Section 402(c)(3)(A) of the Code requires that an eligible rollover distribution from a qualified retirement plan must be transferred to an eligible retirement plan no later than the 60th day following the day of receipt in order to avoid having to include that distribution in the distributee's gross income for that year.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience.

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

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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.

The information you presented demonstrates hardship because of the unexpected and unrequested distribution from Plan A, and your non-receipt of the distribution check. You could not reasonably satisfy the requirement that Amount E be deposited in an eligible retirement plan or IRA within 60 days of the distribution from Plan A. The failure to deposit Amount E into an IRA within the 60-day period was beyond your reasonable control and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 402(c)(3)(B) of the Code, we waive the 60-day rollover requirement with respect to the part of Amount E that constitutes an eligible rollover distribution pursuant to section 402(c)(4) of the Code. An eligible rollover distribution can consist only of pre-tax amounts and earnings and does not include after-tax employee contributions or distributions required by section 401(a)(9) of the Code. You are granted a period of 60 days from the issuance of this ruling letter to make your rollover. If all other requirements of section 402(c) of the Code (except the 60-day requirement) are met with respect to such contributions, this amount will be considered rollover contributions within the meaning of section 402(c) of the Code.

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 that may be applicable thereto.

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

If you wish to inquire about this ruling, please contact

Sincerely yours,


for Alan C. Pipkin
Manager, Technical Group 4
Employee Plans

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Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

cc: