

200416011



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JAN 21 2004

T:EP:RA:T4

Uniform Issue List: 408.03-00

Legend:

Taxpayer A=

Amount B=

Account C=

Plan D=

Dear

This is in response to your letter dated March 15, 2003, in which you request, through your authorized representative, a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code (the Code).

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

Taxpayer A is a 67 year old [redacted] was diagnosed with cancer in 2001 and around March 15, 2002, [redacted] announced that he was retiring on April 1, 2002. Between March and April 2002, [redacted] applied for [redacted] pension benefits from Plan D and kept working until [redacted] retirement date of April 1, 2002. [redacted] died on April 19, 2002.

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Upon the death of spouse, Taxpayer A informed pension plan about death. After providing the plan administrator with the necessary information, on or about July 22, 2002 Taxpayer A received, as beneficiary, Amount B.

That same day and unaware that Amount B represented taxable income and with no knowledge about the rollover option, Taxpayer A went to a bank where had a regular checking account to deposit Amount B. While at the bank, a teller suggested that Taxpayer A should see the bank's financial advisor. Taxpayer A consulted with the bank's financial advisor who suggested that Taxpayer A invest at least of Amount B into Account C. Taxpayer A subsequently established Account C. Account C is a non-IRA insurance product.

Taxpayer A learned that was entitled to rollover Amount B into a spousal IRA within the 60 day period allowed by the Code to avoid any adverse tax consequences. If the requested waiver to the 60-day period is approved by the IRS, Taxpayer A plans to deposit a minimum of and a maximum of to establish own IRA.

Due to the distractions resulting from , Taxpayer A failed to rollover Amount B into a spousal IRA within the 60-day time limit.

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.

Rev. Proc. 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) 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.

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

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to that part of the distribution from Plan D of Amount B which 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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B, in cash, into an IRA account. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 402(c)(3) 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 which 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.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact _____, at _____.
Please address all correspondence to _____.

Sincerely yours,

_____, Manager
Employee Plans Technical Group 4

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

Cc: