



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

200447041

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

AUG 27 2004

SE T. EP. RA. T4

Legend:

Taxpayer A=

Stock B=

Amount C=

IRA D=

Company E=

Plan F=

Company G=

Company H=

Date I=

Date J=

Date K=

Date L=

Dear :

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This is in response to your request of May , 20 , through your authorized representative, for a waiver of the 60-day rollover requirement contained in section 402(c)(3) 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 terminated employment with Company E on Date I and informed Company E that he wanted to make a direct rollover of his entire account balance in Plan F (which consisted of Stock B and Amount C) to IRA D that Taxpayer A had with Company G. In order to consummate the intended rollover, on Date J Taxpayer A spoke with a Company E Retirement Benefits employee and instructed the employee to make a direct rollover. As was customary for this type of transaction, involving terminating employees, the phone call was recorded.

On Date K Taxpayer A received a check for Amount C payable to Company G, which Taxpayer A immediately deposited into IRA D. Shortly thereafter, Taxpayer A received a notification from Company H indicating that Company E had transferred to Company H Stock B that had been credited to Taxpayer A's account in Plan F. After receiving the transaction advice from Company H, Taxpayer A called Company H and requested that Stock B be transferred to IRA D with Company G, as he had requested originally on Date J. The transfer finally did take place on Date L, which was more than 60 days after Date K.

While preparing income taxes, Taxpayer A realized the tax consequences of Company E's failure to make a direct rollover of Stock B together with Amount C into IRA D as had requested.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Stock B.

Section 402(a) 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) 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 of the Code.

Section 402(c) of the Code defines and provides the rules applicable to rollovers from exempt trusts.

Section 402(c)(1) of the Code provides that if —

(A) 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 in such distribution to an eligible retirement plan, and

(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

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)(3) of the Code provides that the transfer must be made within 60 days of receipt. In general, section 402(c)(3)(A) provides that section 402(c)(1) shall not apply to any transfer made after the 60<sup>th</sup> day following the day on which the distributee received the property distributed.

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, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

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), 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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The information presented by Taxpayer A demonstrates that Taxpayer A made a recorded request with Company E to make a direct rollover of his entire account in Plan F (consisting of Stock B and Amount C) into IRA D. An internal error occurred at Company E which resulted in only Amount C being transferred to IRA D. Taxpayer A trusted Company E to make a direct rollover, as he requested. The error committed by Company E prevented a direct rollover of Stock B into IRA D within 60-days.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Stock B which was transferred to IRA D on Date L. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met Stock B will be considered a rollover contribution 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.

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