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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 4 2004

Uniform Issue List: 408-03-00

SE: T: EP: PA: T1

Legend:

Taxpayer =
Company A =
Plan B =

Amount C =
Amount D =
Bank E =
Account F =

Dear :

This letter is in response to a request for a letter ruling dated February 19, 2004, as supplemented by additional correspondence dated June 25, 2004, September 22, 2004, and October 4, 2004, submitted by your authorized representative, 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:

The Taxpayer was an employee of Company A. From May, 2003, to September, 2003, the Taxpayer was hospitalized nine times for a medical condition. As a result of these hospitalizations and the Taxpayer's medical condition, he lost his job with Company A. In September, 2003, concerned with medical and other bills, and against the wishes of his spouse, the Taxpayer requested a lump-sum distribution from Plan B. On September 30, 2003, the Taxpayer received a lump-sum distribution of Amount C. On October 27, 2003, Amount D (Amount C minus Federal Income Tax withholding) was deposited into the Taxpayer's checking account ("Account F") with Bank E.

The Taxpayer was again hospitalized in October and November, 2003. Due to the Taxpayer's medical condition, Amount C was never rolled into an eligible retirement plan, such as an individual retirement account ("IRA"), within 60 days of its receipt. Amount D has remained in Account F at all times. The Taxpayer's spouse now handles his financial affairs.

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

Code section 402(c)(3)(A) generally provides that any amount distributed from a qualified trust must be transferred to an eligible retirement plan no later than the 60th day following the day of receipt in order to avoid inclusion in the distributee's gross income.

Under Code section 402(c)(8)(B), the term eligible retirement plan means (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b), (iii) a qualified trust, and (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)(B) provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) in "hardship" situations 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.

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), 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 by the Taxpayer indicates that due to the Taxpayer's medical condition, he could not reasonably satisfy the requirement that Amount C be deposited in an eligible retirement plan such as an IRA within 60 days of the distribution from Plan B. Therefore, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement contained in section 402(c)(3), with respect to Amount C, for transferring distributed qualified employee retirement funds to an eligible retirement plan. The Taxpayer is granted a period of 60 days from the issuance of this ruling letter to make the rollover. Provided all other requirements of section 402(c)(3), 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).

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.

In accordance with the provisions of a power of attorney on file with this office, we are sending the original of this letter ruling to your authorized representative.

If you wish to inquire about this ruling, please contact [REDACTED], SE:T:EP:RA:T1, I.D. # [REDACTED], at [REDACTED].

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

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

cc: