



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200451040

SEP 23 2004

Uniform Issue List: 402.08-00

SE: T: EP: RA: T4

Legend:

Individual A =  
Plan X =  
Credit Union R =  
Employer P =  
Amount D =  
Amount E =  
Date M =  
Date O =

Dear:

This letter is in response to your letter dated March 27, 2003, in which you request a waiver of the 60-day rollover requirement in section 402(c) of the Internal Revenue Code (the Code).

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

Individual A was a participant in Plan X sponsored by Employer P. Individual A terminated employment with Employer P and took a subsequent distribution under Plan X of Amount D on Date M. Individual A intended to roll over a portion of Amount D,

200451040

Amount E, into an IRA with Credit Union R. On Date O, Individual A deposited Amount E with Credit Union R. Credit Union R put Amount E into a money market account. When Individual A's tax preparer was completing the [REDACTED] tax return, Individual A became aware that Amount E had been placed in a non-IRA account. Amount E remains in the money market account.

Individual A did not deposit Amount E into an IRA within 60 days of Date M as he intended, but relied on Credit Union R to deposit Amount E into an IRA.

Based on the above facts and representations, Individual A requests a ruling that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Amount E .

Section 402(a) of the Code provides that, except as otherwise provided in this section, 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 of the distributee in which distributed under section 72 of the Code (relating to annuities).

Section 402(c) of the Code (concerning rules applicable to rollovers from exempt trusts) provides, in part, that if any portion of the balance to the credit of an employee is paid to the employee in an eligible rollover distribution and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, 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 of a distribution 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) 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 eligible rollover distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

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)(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.

200451040

The information presented demonstrates that Individual A did not deposit Amount E into an IRA within 60 days, as he intended, but relied on Credit Union R to deposit Amount E into an IRA. Credit Union R erred in putting Amount E into an account that was not an IRA.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount E. Individual A is granted a period of 60 days from the date of issuance of this ruling letter to contribute an amount up to Amount E in cash into an IRA. Provided all other requirements of section 402(c)(3) of the Code are otherwise satisfied (except the 60-day requirement) Amount E 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 ruling letter is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions please contact.....

Sincerely yours,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 4