



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200418045

FEB 02 2004

T:EP:BA:UK

Uniform Issue List: 402.08-00

Legend:

Taxpayer A	=
Taxpayer B	=
Company C	=
Amount D	=
Bank E	=
Plan X	=

Dear :

This letter is in response to a ruling request dated October 3, 2003, as supplemented by a fax dated November 5, 2003, 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:

In February of 2003, Taxpayers A and B were married. Taxpayer B was a retired employee of Company C. On February 11, 2003, Taxpayer B requested a lump sum distribution of his shares of Company C stock in Plan X to be distributed in the form of stock certificates. On February 24, 2003, Bank E distributed shares of stock totaling Amount D. The stock was mailed to Taxpayer B's home address. On April 7, 2003, 42 days after Bank E distributed the stock, Taxpayer B suffered a heart attack and became comatose. Taxpayer B died 10 days later on April 17, 2003.

Due to Taxpayer B's death, the Amount D shares of stock were never rolled into an eligible retirement plan within 60 days of their receipt. The shares are currently held in an account in the name of Taxpayer A at Bank E.

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), for transferring distributed qualified employee retirement funds to an eligible retirement plan, and rule that the retirement distribution made to Taxpayer B on February 24, 2003, shall not be included in Taxpayer A's gross income for tax year 2003.

Code section 402(c)(3)(A) 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). If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

Code section 402(c)(3)(B) 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.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides guidance on applying to the Internal Revenue Service for a waiver of the 60-day rollover requirement contained in Code section 402(c)(3)(B). The Procedure states 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 Taxpayer A demonstrates that due to Taxpayer B's death, Taxpayer A could not reasonably satisfy the requirement that Amount D be deposited in an eligible retirement plan such as an IRA within 60 days of the distribution from Plan X. The failure to deposit Amount D into a Rollover IRA within the 60-day period was beyond the reasonable control of Taxpayer A, 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, the Service hereby waives the 60-day rollover requirement, with respect to Amount D, that constitutes an eligible rollover distribution pursuant to section 402(c)(4). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into one or more IRAs. Provided all other requirements of section 402(c), 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).

Taxpayer A 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) 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) 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.

Pursuant to the power of attorney on file with this office, you are receiving the original of this letter ruling and your representative is receiving a copy of the letter ruling.

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

Sincerely yours,

A handwritten signature in black ink, appearing to be a stylized 'S' or 'J' with a vertical line through it.

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

Copy of Notification Letter (Form 1155) to Authorized Representative

cc: