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

SEP 12 2005

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

U.I.L. 402.08-00

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*T:EP:RA*

Legend:

- Taxpayer A = \*\*\*\*\*
- Plan X = \*\*\*\*\*
- Employer K = \*\*\*\*\*
- Company B = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Amount E = \*\*\*\*\*
- Amount F = \*\*\*\*\*
- Account M = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your letter dated May 12, 2005, as supplemented by correspondence dated July 13, 2005, and August 26, 2005, submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in sections 408(d)(3) and 402(c)(3)(A) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A's employment with Employer K terminated on October 22, 2003. During his employment with Employer K, Taxpayer A participated in Plan X. Upon his termination of employment with Employer K, Taxpayer A elected to receive his Plan X account balance in the form of a direct rollover that he

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intended to rollover to an individual retirement arrangement (IRA) with Company B. Documentation submitted by Taxpayer A indicates that on October 30, 2003, the administrator of Plan X issued a check payable to Company B for the benefit of Taxpayer A in the amount of Amount E. Documentation submitted by Taxpayer A also shows that on August 12, 2004, a second distribution was made from Plan X to Company B on behalf of Taxpayer A in the amount of Amount F. Documentation submitted by Taxpayer A further shows that both amounts were not deposited into an IRA, but rather deposited into Account M, a regular investment account Taxpayer A and his spouse maintain with Company B. The Forms 1099-R issued by Company B show that the distributions of Amount E and Amount F were coded as Code "G" which is a direct rollover to a qualified plan.

Taxpayer A asserts that he believed that Amount E and Amount F had been rolled over to an IRA with Company B as he requested and just recently discovered that these amounts had not been rolled over to an IRA. Taxpayer A further asserts that at all times he has treated these funds as if they were invested in an IRA. Taxpayer A asserts that Amount E and Amount F are intact in Account M with Company B and he has not used the funds since they have been in Account M, which is supported by account statements submitted by Taxpayer A.

Based upon the foregoing facts and representation, you request that Service waive the 60 day rollover requirement with respect to the distribution of Amount D (the sum of Amount E and Amount F) from Plan X.

Section 402(c) of the Code provides rules governing rollover of amounts from exempt trust to eligible retirement plans, including IRAs.

Code section 402(c)(1) provides, generally, that if any portion of an eligible rollover distribution from a qualified trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution property other than money, the amount so transferred consists of property distributed, such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to any employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include

(A) any distribution which is one of a series of substantially equal periodic

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payment (not less frequently than annually) made-

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Code section 402(c)(8) defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides, generally, 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.

Code section 402(c)(3)(B) provides that the Secretary may waive the 60-day requirement under subparagraph (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 distributions that occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

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 408(d)(3)(1), 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, or 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 and documentation submitted by Taxpayer A is consistent with his assertion that he failed to complete a rollover to an IRA within the 60-day rollover period because his Plan X account balance, which was distributed to Company B in the form of a direct rollover, was deposited into

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Account M and not an IRA as he elected upon his termination of employment with Employer K.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D (the sum of Amount E and Amount F) from Plan X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to an IRA. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered rollover contribution within the meaning of section 402(c)(1) 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 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.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

This letter assumes that Plan X satisfies the requirement for qualification under Code section 401(a) at all times relevant to this transactions.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions concerning this ruling, please contact

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Sincerely yours,



Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling  
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