TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201236035

JUN 13 2012

Uniform Issue List: 402.00-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =

Company B =

Company C =

Attorney D =

Company E =

Law Firm F =

Amount A =

Plan X =

Plan Y =

Dear :

This is in response to your request dated August 5, 2010, as supplemented by correspondence dated October 13, 2010, December 8, 2010, May 11, 2011, and June 28, 2011, submitted on your behalf by your authorized representative, in which you request 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, age 53, represents that he received a distribution from Plan X totaling Amount A. Taxpayer A asserts that his/her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to his reliance on the advice provided by Company C and Attorney D, which resulted in Amount A being held in a non-IRA account.

Taxpayer A worked for Company B which maintained several qualified retirement plans including Plan X , a cash or deferred arrangement under section 401(k) of the Code. Following termination of his employment with Company B, Taxpayer A decided to purchase a healthcare franchise. Although Taxpayer A had sufficient money to pay the franchisor's fees and start-up costs from his personal accounts, he needed advice regarding the financing of the new business and the franchisor suggested he contact Company C to discuss financing.

Taxpayer A contacted Company C, and representatives of Company C made representations to Taxpayer A regarding a program under which the transfer of funds from Plan X to a new plan to be established by the new healthcare franchise would be a qualified rollover contribution.

On April 7, 2009, Taxpayer A submitted his application to participate in the Company C program. Company C forwarded various plan and corporate documents to Taxpayer A on April 23, 2009.

On May 29, 2009, Taxpayer A met with Attorney D, a tax attorney with qualified plan experience, and provided Attorney D with the documents provided to him by Company C.

Taxpayer A represents that he informed Attorney D that he would not roll over the amounts from his plan unless the she advised him that the Internal Revenue Service ("Service") would approve of the transaction, at which point Attorney D informed Taxpayer A that there were some "red flags" with the Company C program, but that the Service had not issued a statement prohibiting this type of transaction and that he could safely proceed with the transaction.

Relying on the advice from Company C and Attorney D, Taxpayer A set up Company E and caused Company E to establish the Company E Profit Sharing Plan (Plan Y). On June 5, 2009, Taxpayer A received a distribution of Amount A from Plan X and on June 10, 2009 he rolled it over to Plan Y. Taxpayer A then had Plan Y buy stock in Company E with the rolled over amounts. The proceeds from the sale of the stock were used to capitalize Company E.

In mid-March of 2010, when Taxpayer A's accountant was preparing Taxpayer A's 2009 income tax return, the accountant advised Taxpayer A to consult with another attorney regarding the transactions surrounding the purchase of the franchise. Taxpayer A then met with attorneys at Law Firm F, who advised Taxpayer A to unwind the transactions, and provided assistance in doing so.

On August 5, 2010, as the duly authorized representative of Company E, Taxpayer A approved a corporate resolution to rescind the corporate actions that had established Plan Y and permitted Plan Y to invest in plan assets attributable to rollover accounts in Company E stock. As a result of this transaction, the assets of Plan Y including the Company E stock purchased with Amount A were retroactively no longer held by a plan intended to be a qualified plan, and the rollover of Amount A to Plan Y on June 10, 2009, was retroactively not a rollover to a plan intended to be a qualified plan.

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

Section 402(c) of the Code provides that if 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, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and 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 transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) 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.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, 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 and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount A was caused by his reliance on the combined advice provided by Company C, Attorney D and Law Firm F, which resulted in Amount A retroactively being held in other than a qualified plan rollover IRA.

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 A from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA or another qualified plan. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling assumes that Plan X satisfied the qualification requirements of section 401(a) of the Code at all times relevant to this transaction. This ruling does not express an opinion as to whether Plan Y satisfied the qualification requirements of section 401(a) 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.

A copy of this letter ruling is being sent to your authorized representative pursuant to a Power of Attorney on file with this office.

If you wish to inquire about this ruling, please contact me at .
Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky

Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc: