

MEMO# 3732

April 24, 1992

CLERICAL ERROR IN REREGISTERING MUTUAL FUND SHARES IN IRA ROLLOVER RESULTS IN TAXABLE DISTRIBUTION

April 24, 1992 TO: OPERATIONS COMMITTEE NO. 12-92 TRANSFER AGENT ADVISORY
COMMITTEE NO. 25-92 RE: CLERICAL ERROR IN REREGISTERING MUTUAL FUND SHARES IN
IRA ROLLOVER RESULTS IN TAXABLE DISTRIBUTION

In attached Private Letter Ruling 9211035, the Internal Revenue Service has ruled that, in the attempted rollover of retirement plan assets to an individual retirement account ("IRA"), the failure of a transfer agent clerk correctly to reregister the shares of one mutual fund account from the name of the plan trustee to the IRA custodian results in a taxable distribution of those fund shares to the retirement plan participant. According to the facts of the ruling, the trustee of a money purchase pension plan was also its sole participant. The plan assets were invested in five different mutual funds of one fund family. Because the plan did not meet the minimum participation requirements imposed by the Tax Reform Act of 1986, the plan was terminated. The participant asked that the entire balance of the plan invested in the five mutual funds be rolled over into an IRA. In the application adopting the IRA, the participant stated that the current investment program of the plan should be maintained under the IRA; i.e., that each account should simply be reregistered from the name of the plan trustee to the name of the IRA custodian. When the mutual fund complex received the instructions to establish the IRA and transfer all plan assets to the IRA, only four of the funds were reregistered by the clerk in the IRA custodian's name and accepted by the custodian as a rollover contribution. The shares in the fifth mutual fund were not reregistered, and this failure was not discovered until the following calendar year, at which time the reregistration was executed retroactively. The ruling in effect asked two questions: 1) was there a qualified total distribution eligible for a rollover, and 2) was there a rollover of the plan assets? Under the holding of Revenue Ruling 81-158 (1981-1 C.B. 205), a distribution is considered made when instructions to reregister ownership of - 1 - regulated investment company shares in the name of the distributee (here, the IRA custodian) is received by the transfer agent. The Service therefore concluded that the participant had received a qualified total distribution within the meaning of Internal Revenue Code section 402(a)(5)(E)(i)(I), and was eligible to roll over the distribution to an IRA. However, the Service ruled that only the plan assets invested in the first four funds had properly been rolled over. The assets invested in the fifth fund were considered to have been distributed in a taxable distribution despite the transfer agent's retroactive correction of the problem. We will keep you informed of developments. David J. Mangefrida Jr. Assistant Counsel - Tax

Attachment

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