Revenue Ruling 87-77

ISSUE

Whether the contribution of a cash amount representing the fair market value of property received in a qualified total distribution from a qualified plan to an individual retirement account (IRA) within 60 days of the distribution is a rollover contribution described in section 402(a)(5) of the Internal Revenue Code if the property received in the distribution is retained by the employee.

FACTS

B received a qualified total distribution consisting of 10x dollars cash and 15x dollars worth of property from a noncontributory profit-sharing plan meeting the requirements of section 401(a) of the code. B immediately contributed into an IRA the cash received plus an additional 15x dollars cash representing the fair market value of the property received. B retained the original property received in the distribution.

LAW AND ANALYSIS

Section 402(a)(1) of the Code provides, in general, that the amount actually distributed to any distributee by an employees' trust described in section 401(a) is taxable to such individual, in the year in which it is distributed, under section 72 (relating to annuities).

Section 402(a)(5)(A) of the Code provides that if (i) any portion of the balance to the credit of an employee is paid in a qualified total distribution or a partial distribution satisfying section 402(a)(5)(D), (ii) the employee transfers any portion of the property received to an IRA, and (iii) in the case of a distribution of property other than money, the amount transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in the distributee's gross income in the taxable year in which paid.

Section 402(a)(6)(D)(i) of the Code provides that, for purposes of section 402(a)(5), the contribution of an amount equal to the proceeds from the sale of property received in the distribution shall be treated as the contribution of property received in the distribution.

Employees who receive property other than cash as part of a qualified total distribution and wish to make a rollover contribution of such property must either contribute the identical property received or sell the property in a bona fide sale and contribute the proceeds. See H.R. Rep. No. 95-1737, 95th Cong., 2d Sess. 16 (1978). In this case, B neither contributed the property nor sold it and rolled over the proceeds. Instead B retained the property and contributed cash in its place.

HOLDING

The contribution to an IRA of cash representing the fair market value of property received by B in the qualified total distribution was a rollover contribution described in section 402(a) of the Code. However, the fact that the portion of the cash contributed to the IRA that is attributable to the property does not qualify as a rollover contribution does not affect the treatment of the remaining portion of the cash contribution under section 402(a)(5).