



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201007061

NOV 25 2009

SE:T:EP:RA:T3

Uniform Issue List: 402.00-00

Legend:

- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Company B =
- Company C =
- Company E =
- Amount A =
- Plan X =
- IRA X =

Dear:

This is in response to your request dated May 4, 2009, as supplemented by correspondence dated August 7, 2009, 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:

You are 64 years old. You were a participant in Plan X, a retirement plan that was intended to be qualified under section 401 (a) of the Code. On Date 1, Company B, the administrator of Plan X, issued you a distribution check from Plan X for Amount A. Your intent was to roll over Amount A into an Individual Retirement Arrangement (IRA). You represent that your failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to an

error caused by a financial advisor of Company C. You assert that Amount A has not been used for any other purpose.

Amount A was distributed to you on Date 1. On Date 2, within the 60-day rollover period, you met with a financial advisor of Company C to discuss investment options for Amount A. The same day, you deposited Amount A with Company C. You have provided paperwork completed on that day by Company C that indicates Amount A was to be placed into a traditional IRA. However, unknown to you, Amount A was placed into a non-IRA account by Company C.

On Date 3, you met with the same financial advisor from Company C to discuss investment options for your IRA funds. At that time, you became aware that Amount A had been deposited into a non-IRA account. On that day, Date 3, you requested Amount A be returned to you because you were dissatisfied with the investment options available to you through Company C. You received a check from Company C for Amount A on Date 4. At that time, you consulted with another advisor on what to do with Amount A because you were aware that you were outside of the 60-day statutory window.

One week later, on Date 5, shortly after the expiration of the 60-day rollover period, you deposited Amount A into an IRA, IRA X, with Company E.

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

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 is consistent with your assertion that the failure to accomplish a timely rollover was caused by an error of a financial advisor of Company C.

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. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount A to IRA X will be considered a rollover contribution within the meaning of section 402(c)(3) 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 a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact

at Please address all correspondence to

SE:T:EP:RA:T3.

Sincerely,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: