



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

201443029

JUL 28 2014

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 402.08-00

T:EP:RA:T)

Legend:

- Taxpayer A =
- Plan X =
- Individual B =
- Company C =
- Amount 1 =
- Amount 2 =
- Amount 3 =
- Date 1 =
- IRA Y =

Dear :

This is in response to your request dated December 11, 2013, from 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 represents that she received a distribution from Plan X totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to the death of Individual B which impaired Taxpayer A's ability to make a timely rollover. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A divorced her husband, Individual B, in July 2010. Prior to the divorce, Individual B handled all of the couple's financial affairs. After the divorce, the divorced couple remained on good terms and Individual B continued to assist Taxpayer A with her financial affairs.

Individual B was a participant in Plan X, a plan that is subject to section 414(p) of the Code. As a result of a qualified domestic relations order signed on November 13, 2012, Taxpayer A was entitled to receive a distribution from Plan X. Taxpayer A represents that she knew that "the paperwork stated that an account was set up in my name."

On May 31, 2013, Plan X issued a full distribution of Taxpayer A's account, Amount 1, in the form of a check for Amount 2 and automatic 20 percent withholding of Amount 3. Taxpayer A received the letter with the check around Date 1, the date Individual B died suddenly. Due to the death, Taxpayer A was busy with planning and family arrangements (Taxpayer A and Individual B had two children). Consequently, Taxpayer A did not open the letter until the weekend of August 17, 2013, after the expiration of the 60-day rollover period, and learned of the automatic distribution and 20 percent withholding. Taxpayer A states that she did not want a distribution.

On August 23, 2013, Taxpayer A filed a claim with Plan X regarding the distribution of the account. On September 13, 2013, the Office of the Plan Administrator denied her claim stating that it had reviewed how the distribution was handled and determined that it was handled in accordance with the terms of Plan X. Specifically, an account was established for Taxpayer A on December 3, 2012, and Company C, acting on behalf of the Plan Administrator of Plan X, had sent a letter dated December 5, 2012, addressed to Taxpayer A at the same mailing address as the check, notifying her that a Plan X account had been established for her on December 3, 2012, as an alternate payee. The December 5, 2012, letter notified Taxpayer A that if she did not request a full distribution within 180 days of December 3, 2012, the balance would be paid out automatically, and further stated that income tax would be withheld at a 20

percent rate. A Special Tax Notice Regarding Plan Payments was included in compliance with section 402(f) of the Code. The December 5, 2012, letter stated that it was the final communication to her regarding her Plan X account. Taxpayer A represents that she did not receive the December 5, 2012, letter.

Taxpayer appealed on September 25, 2013, and Plan X denied the appeal on November 26, 2013. Taxpayer A deposited the check for Amount 2 into her personal account on November 27, 2013. On December 9, 2013, Taxpayer A set up IRA Y and deposited Amount 1.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount 1.

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) of the Code 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)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

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

Section 3405(c) of the Code provides that the payor of an eligible rollover distribution shall withhold from the distribution an amount equal to 20 percent of the distribution unless the distributee elects under section 401(a)(31)(A) of the Code to have the distribution paid directly to an eligible retirement plan.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions."

Section 1.401(a)(31)-1, Q&A-15 of the Income Tax Regulations ("Regulations") provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities

Section 1.402(c)-2, Q&A-12 of the Regulations provides that the eligible rollover distribution rules of section 402(c) of the Code also apply to distributions to a former spouse who is an alternate payee under a qualified domestic relations order (as defined in section 414(p)).

Section 1.402(c)-2, Q&A-11 of the Regulations provides that because the amount withheld as income tax under section 3405(c) of the Code is considered an amount distributed under section 402(c) of the Code, an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60-day period, in addition to the net amount of the eligible rollover distribution actually received by the employee.

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 are consistent with her assertion that her failure to accomplish a timely rollover was caused by the death of Individual B which impaired Taxpayer A's ability to make a timely rollover. Due to the death of her ex-husband shortly after distribution, Taxpayer A did not open the letter with the check for Amount 2 until after July 30, 2013, the end of the 60-day rollover period for the May 31, 2013, distribution. Amount 3 was withheld due to failure to act prior to May 31, 2013, but Taxpayer A would have had the option of finding other funds to contribute during the 60-day rollover period pursuant to Section 1.402(c)-2, Q&A-11 of the Regulations if she had opened the letter.

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 1 from Plan X. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, were met with respect to such

contribution, the contribution of Amount 1 to IRA Y will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

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

No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

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 is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact
(ID) at () - . Please address all correspondence
to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: