

20054604 5



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG 24 2005

Uniform Issue List: 402.00-00

SE. T. EP. RA. TI

Legend:

Taxpayer A.....

Amount P

Company S

Company T.....

Plan X.....

IRA Y.....

Dear :

This is in response to a letter dated April 14, 2005, as supplemented by correspondence dated June 23, 2005, July 13, 2005, and August 14, 2005, in which your authorized representative submitted on your behalf 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 were submitted in connection with your request.

Taxpayer A, age 71, represents that on December 16, 2004, she met with a representative of Company T to discuss a rollover of her assets in Plan X to an Individual Retirement Arrangement ("IRA") with Company T, IRA Y. Intending to do a direct rollover, on December 22, 2004, Plan X issued a check payable to Company T for the benefit of Taxpayer A, in Amount P. However, Taxpayer A lost the check and requested that the check be reissued. Taxpayer A received the reissued check, also payable to Company T, during the last week in January, 2005. On February 7, 2005, Taxpayer A mistakenly deposited the check into her savings account with Company S, and Company S accepted the check even though Company T was the payee. During the second week of March, 2005, after receiving her February statement from Company T, Taxpayer A realized a mistake had been made and contacted her tax-return preparer. On April 14, her tax-return preparer submitted the above request. Amount P remains in Taxpayer A's savings account with Company S.

Based on the above facts and representations, Taxpayer A requests 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 P.

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)(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).

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) 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).

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

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, 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.

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 and documentation submitted by Taxpayer A is consistent with her assertion that she intended to execute a direct rollover of Amount P and her failure to accomplish a direct rollover was due to a mistake by Company S which should not have accepted the check made payable to Company T. 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 P from Plan X. Taxpayer A is

granted a period of 60 days from the issuance of this ruling to contribute Amount P to an IRA. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, Amount P will be considered a rollover contribution within the meaning of section 402(c)(3).

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

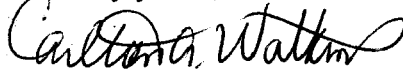
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

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 has been sent to your authorized representative.

If you wish to inquire about this ruling, please contact

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of letter ruling
Notice 437