



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200634058

Uniform Issue List: 402.00-00

MAY 16 2006

Legend:

Taxpayer A =
Amount A =
Amount B =
Amount C =
Plan X =

T:EP:RA:T3

This is in response to your request 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 asserts that she previously was a participant in Plan X, a plan represented to be qualified within the meaning of Code section 401(a). Taxpayer A represents that, during calendar year 2004, she received a distribution from Plan X totaling Amount A less Amount B (federal tax withholding) and also less Amount C (state tax withholding) which, she asserts, was due to the termination of Plan X. Taxpayer A also asserts that no documentation accompanied this distribution. Additionally, Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to her mental and physical condition which impaired her ability to make financial decisions during the period of time which included the 60-day rollover period applicable to her Plan X distribution. Taxpayer A further represents that Amount A is currently in a non-individual retirement account ("IRA") and has not been used for any purpose.

Taxpayer A represents that during the relevant period she was receiving treatment and taking doctor prescribed mind altering medication for chronic back pain and severe depression. She asserts that because of these factors she was unable to accomplish a timely rollover of the distribution of Amount A. Documentation which accompanied this ruling request support Taxpayer A's representations.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement found in section 402(c)(3) of the Code with respect to the distribution of Amount A from Plan X, and that Taxpayer A be permitted to roll over Amount A into an IRA set up and maintained in her name.

With respect to your ruling request, 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.

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

Section 1.401(a)(31)-1 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 presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by her physical and mental problems which prevented her from making a timely rollover.

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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute an amount not to exceed Amount A into a Rollover IRA. 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 into an IRA set up and maintained in the name of Taxpayer A 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.

200634058

Sincerely yours,


 , Manager,
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose