

200642003



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

JUL 25 2006

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SET:EP:RA:T4

Uniform Issue List: 408.03-00

Legend:

Taxpayer A	=
Financial Advisor B	=
Company C	=
Amount D	=
Date E	=
Date F	=
Date G	=
Date H	=
Date K	=
Plan X	=
IRA Y	=

Dear

This is in response to a ruling request dated ***** supplemented by a letter dated ***** , submitted by 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 following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age **, represents that he received a distribution from Plan X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error made by Financial Advisor B. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A attempted to transfer Amount D from Plan X to IRA Y. Taxpayer A established IRA Y on Date H. Amount D was distributed in the form of a check issued on Date E and received by Taxpayer A on Date F. The check was made payable to Company C for the benefit of Taxpayer A, and was received and deposited by Financial Advisor B on Date G. However, Financial Advisor B mistakenly transferred Amount D through a clerical error into a non-IRA savings account of Taxpayer A held by Company C. The non-IRA account had an account number similar to that of IRA Y. The error was not discovered by Taxpayer A until Date K.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D.

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 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) of the Code.

Section 401(a)(31) 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(A), 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 his assertion that his failure to accomplish a timely rollover was caused by an error made by Financial Advisor B.

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 D from Plan X. Taxpayer A is hereby granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount D 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 that may be applicable hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions regarding this ruling, you may contact *****

Sincerely yours,

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Notice of Intention to Disclose
Deleted copy of letter