



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200827035

APR 10 2008

T:EP:RA:T1

Uniform Issue List: 402.08-00; 72.20-00

Legend:

Taxpayer A = *****
Employer B = *****
Financial Institution C = *****
Financial Institution D = *****
Account E = *****
Account F = *****
Account G = *****
Account H = *****
Amount 1 = *****
Plan X = *****

Dear *****:

This letter is in response to a request for a letter ruling, dated *****, as supplemented by correspondence dated *****, in which your authorized representative requests, on your behalf, a waiver of the 60-day rollover requirements 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 request:

Taxpayer A separated from the service of Employer B, effective *****.
During her employment, Taxpayer A participated in Plan X (a cash or deferred arrangement qualified under sections 401(a) and 401(k) of the Code) maintained by Employer B. Taxpayer A's assets remained in Plan X until *****.
Taxpayer A was age 56 at that time.

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By a "Participant Distribution Request" signed by Taxpayer A on *****
Taxpayer A applied for a direct rollover of Amount 1 (her Plan X account balance) to Account E, an individual retirement arrangement (IRA) described in section 408 of the Code, that she maintained with Financial Institution C. However, a representative of Financial Institution C inadvertently entered the wrong account number on the distribution request form, resulting in Amount 1 being transferred instead to Account F, a nonqualified account also maintained by Taxpayer A with Financial Institution C. Copies of Taxpayer A's financial records show that Amount 1 was deposited in Account F as of *****.¹ By the time Taxpayer A discovered the error, the 60-day period allowed under section 402(c) of the Code for completion of a rollover of her Plan X assets into another eligible retirement plan had expired.

After discovering the error committed by Financial Institution C, Taxpayer A transferred the assets from Accounts E and F to Accounts G and H, respectively, established and currently maintained with Financial Institution D. Account G is Taxpayer A's IRA; Account H is her nonqualified account. Because Taxpayer A's Plan X assets were incorrectly transferred to Account F, a nonqualified account, by Financial Institution C, they continue to be held in Account H at Financial Institution D. The assets distributed from Plan X have not been spent, and Taxpayer A has not attempted to complete more than one traditional rollover of the assets distributed from Plan X within a single twelve-month period.

Based on the statements and representations described above, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3)(A) of the Code, pursuant to section 402(c)(3)(B), with respect to the distribution of Amount 1 from Plan X.

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.

¹ By letter dated *****¹, a representative for Financial Institution C acknowledged that a clerical error of one of their Financial Services Representatives had caused Taxpayer A's Plan X assets to be deposited into her nonqualified account rather than into her IRA. By letter dated *****¹, the Financial Institution C representative who made the error also wrote indicating his responsibility for the misdirected qualified plan distribution.

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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 occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code 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.

Section 72(t) of the Code generally provides that with respect to any taxpayer who receives an amount from a qualified retirement plan, including an IRA, prior to attaining age 59½, the taxpayer's tax for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

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 sections 402(c)(3)(B) or 408(d)(3)(I) 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 the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error committed by a representative of Financial Institution C.

Therefore, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into another plan qualified under Code section 401(a) or 403(a), or an IRA under Code section 408. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code and will not be subject to the 10 percent additional tax on early distributions under section 72(t) of the Code.

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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.

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 wish to inquire about this ruling, *****

please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose
- ▶ Copy of cover letter to Authorized Representative