

200924061



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

MAR 16 2009

UIL No. 402.00-00

SE:T:EP:RA:T4

Legend:

Taxpayer A =

Company B =

Company S =

Amount A =

Plan X =

Account C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This is in response to your request dated November 20, 2008, as supplemented by correspondence dated January 17, 2008, submitted on your behalf 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 "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 40, represents that she received a distribution from Plan X totaling Amount A on Date 1. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to a mistake made by Company S. Taxpayer A further represents that Amount A has not been used for any other purpose.

Taxpayer A represents that, after losing her job, she sought to rollover her account in her employer's 401(k) plan, Plan X, to an Individual Retirement Account (IRA). Pursuant to Taxpayer A's request, Plan X issued a distribution check to Company S FBO Taxpayer A totaling Amount A on Date 1. Having completed the paperwork necessary to rollover Taxpayer A's 401(k) account to an IRA, Company B forwarded the paperwork and the distribution check for Amount A to Company S on Date 2. Taxpayer A further represents that, failing to comply with the paperwork in its possession, Company S opened Account C, a non-IRA account, and deposited the distribution check into it on Date 3. Taxpayer A represents that she discovered the problem in February 2008, when she received a Form 1099 (Tax Reporting Statement) reflecting activities in Account C during 2007. In correspondence dated Date 4 and Date 5, Company S acknowledged its mistake in depositing Taxpayer A's distribution check into a taxable account instead of an IRA.

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

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 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) 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, (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 the mistake made by Company S, of not complying with the paperwork in its possession and depositing Taxpayer A's distribution check into a taxable non-IRA.

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 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, Amount 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.

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 \_\_\_\_\_, at \_\_\_\_\_.  
Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

  
for

Donnie H. Littlejohn, Manager,  
Employee Plans Technical Group 4

CC:

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose