



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

200925047

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

MAR 26 2009

SE:T:EP:RA:T3

Legend:

Taxpayer A:

Decedent D:

Amount L:

Amount M:

Date 1:

Date 2:

Date 3:

Month 4:

Month 5:

Plan X:

Attorney V:

Certified Financial Planner M:

Dr. L:

Health Care Provider O:

Individual K:

Instructor C:

Dear :

This is in response to letters dated March 14, 2007, August 26, 2008, and March 3, 2009, 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)(A) 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 on Date 3, Taxpayer A received a distribution of Amount L from Plan X. Taxpayer A asserts that her failure to accomplish a rollover of Amount L within the 60 day period prescribed by section 402(c)(3)(A) of the Code was due to the failure of her tax service provider, Attorney V, to provide correct advice regarding the distribution of Amount L from Plan X.

On Date 1, Taxpayer A's husband, Decedent D, died having designated Taxpayer A as the beneficiary of his account balance in Plan X, a plan intended to be qualified under Section 401(a) of the Internal Revenue Code. In addition to her husband's sudden and unexpected death at age 55, Taxpayer A had lost her father and uncle earlier in the year. After her husband's death, Taxpayer A began exhibiting signs of depression such as sleeplessness, extreme weight loss, and potentially dangerous lapses of concentration due to her grief.

During this period on Date 2, three months after Decedent D's death, Plan X distributed a check in Amount M, (Amount L minus tax withholding) which Taxpayer A deposited in a money market account for safe keeping. Taxpayer A sought professional treatment for anxiety and depression during the 60 day period after the distribution of Amount L from Plan X. Taxpayer A was prescribed drugs to alleviate depression and anxiety. Taxpayer A has submitted documentation from health care providers Dr. L, Health Care Provider O, Instructor C, and Individual K attesting to Taxpayer A's depression and out of character behavior during the 60-day rollover period.

Decedent D and Taxpayer A retained Attorney V to prepare their wills. Attorney V took control of Decedent D's estate tax planning from Taxpayer A after Decedent D's death and was in charge of Decedent D's estate inventory both before and after the Date 2 distribution from Plan X and throughout the following 60-day rollover period. In Fact, the distribution of Amount M was included as an asset

on the Estate Inventory filed with the Probate Court of the county of Decedent D's last residence. Before the end of the 60-day rollover period Taxpayer A was assured by Attorney V that she would have no income tax liabilities as a result of Taxpayer A's inheritance of assets from Decedent D.

Taxpayer A submits that during the depression treatment period which included all of the 60-day rollover period, she relied on Attorney V to handle the financial affairs of Decedent D and Attorney V failed to timely inform Taxpayer A of the availability of a rollover option for Amount L from Plan X and failed to properly advise her and to properly manage the distribution of Amount L until after the 60-day period for a rollover to an IRA had expired. Taxpayer A was notified of her lost opportunity for a rollover of the Amount L Plan X distribution by Certified Financial Planner M after the expiration of the 60-day rollover period who advised Taxpayer A to write the Internal Revenue Service for a 60-day rollover waiver request.

Taxpayer A further represents that she has not used Amount M for any other purpose.

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

With respect to your request to waive to 60 day rollover requirement, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs.

Section 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401 (a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections 401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) of the Code 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.

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)(B), 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 provided on behalf of Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount L within the 60 day period prescribed by section 402(c)(3)(A) of the Code was due to the failure of her tax service provider, Attorney V, to provide correct advice regarding the distribution of Amount L from Plan X.

Thus, based on the above, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover period found in section 402(c)(3)(A). As a result Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount L, or any portion thereof, to an IRA. Provided all other requirements of section 402(c), except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions within the meaning of section 402(c).

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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.

If you wish to inquire about this ruling, please contact

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose