



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 408.03-00

APR 28 2009

Legend:

Taxpayer A	=
IRA Account B	=
Financial Institution C	=
Thrift Savings Plan Account D	=
Date E	=
Date F	=
Date G	=
Amount 1	=

SE: T' EP: RA: TI

Dear:

This letter is in response to your request for a letter ruling dated January 22, 2009, as supplemented by additional information dated March 6, 2009, in which you requested 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 his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an unexpected loan distribution from his Thrift Savings Plan ("TSP") Account D upon his retirement from the military and hospitalization during the 60-day period. The funds were deposited into Individual Retirement Account ("IRA") Account B on Date G, following the expiration of the 60-day period.

Taxpayer A served in active duty in the United States Air Force. During this period of time he maintained TSP Account D. Taxpayer A had previously received a participant loan from Account D. He retired from active duty military service on Date E. Upon his retirement, Taxpayer A had an outstanding balance of Amount 1 on the participant loan. Taxpayer A received a notice dated Date F from the TSP that as the result of his separation from federal service it had closed his outstanding participant loan by declaring Amount 1 a taxable distribution. The notice stated that he had 60 days to deposit an amount up to Amount 1 into a traditional IRA or other eligible employer plan using personal funds. He did not receive any funds as the result of this declared distribution.

It has been represented that Taxpayer A was not provided any advice by any military finance or other personnel specialists concerning the tax consequences of separating from service with an outstanding participant loan or that the outstanding balance on such a loan would become a taxable distribution. As a result, Taxpayer A was surprised to receive the notice stating the outstanding loan balance was considered a distribution and that he had 60-days to deposit Amount 1 into an IRA.

The documentation Taxpayer A provided indicates that upon receiving notice of the declared distribution of Amount 1 from TSP Account D he intended to roll Amount 1 into an IRA within the 60 days. However, documentation submitted indicates that Taxpayer A was hospitalized with chest pains and an abnormal EKG reading for 3 days which required post hospitalization specialized care. In addition, during the 60-day period, he was injured in a car accident in which he suffered injuries which required continued orthopedic and cardiac care. As the result, he was unable to complete the rollover into IRA Account B with Financial Institution C within the 60-day period. The funds were deposited into IRA Account B on Date G, following the expiration of the 60-day rollover period. Medical documentation submitted in his request indicates the severity of his medical problems and the extent of his treatment for these conditions. At all times during the 60 day period, he had sufficient funds to complete the rollover.

Based on the above facts and representations, Taxpayer A has requested a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount 1 from TSP Account 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 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.

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 his assertion that his failure to accomplish a timely rollover was caused by the unexpected distribution of his outstanding loan balance in the TSP following separation from military service and subsequent medical emergencies which impaired his ability to accomplish 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 declared distribution of Amount 1 from TSP Account D. 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, contributed to IRA Account B, will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

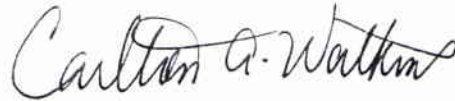
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

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This ruling 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 ** ***** (ID Number **-****) by phone at (***) ***-**** or by fax at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose