



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201024072

MAR 23 2010

Uniform Issue List: 402.00-00

SE: T: EP: RA: T1

Legend:

Taxpayer A =

Financial Institution B =

IRA C =

Financial Institution D =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to your request for a letter ruling dated January 27, 2010, submitted by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) 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 her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to the failure of Financial Institution B to follow Taxpayer A's instructions and properly rollover Amount 1 from Financial Institution B to Financial Institution D.

On December 18, 2008, after terminating employment with her former employer, Taxpayer A requested that Amount 1 be transferred from her former employer's 403(b) plan maintained at Financial Institution B, in a direct trustee-to-trustee transfer, to IRA C maintained at Financial Institution D. However, Financial Institution B processed the transfer as a taxable distribution and erroneously withheld Amount 2 in federal income tax. Thus, only Amount 3 was transferred to IRA C. Since the transaction was done by a trustee-to-trustee transfer, Taxpayer A did not become aware of the error until she began processing her 2008 federal tax return. At that time, Taxpayer A discovered that the entire amount (Amount 1) was reported as a taxable distribution. Corrected 1099's were issued for Amount 3, but not for Amount 2, which was withheld for federal and state taxes and could not be readily recovered. Amount 2 was refunded to Taxpayer A after the 60-day rollover period had expired. Taxpayer A seeks to deposit Amount 2 into IRA C.

Documentation submitted as part of this request, including a letter from Financial Institution B admitting its error, confirms the intent of Taxpayer A to complete a direct trustee-to-trustee transfer of Amount 2 into IRA C and the error on the part of Financial Institution B.

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 with respect to her contribution of Amount 2 into IRA C because of the failure of Financial Institution B to process the rollover correctly.

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 Taxpayer A's assertion that she intended to transfer Amount 1 into IRA C. Furthermore, Amount 3 had been placed into IRA C and the difference between Amount 1 and Amount 3 (Amount 2) would also have been placed in IRA C but for an error on the part of Financial Institution B which was beyond her control.

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 2 from Taxpayer A's 403(b) plan account. 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 2, contributed to IRA C, will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

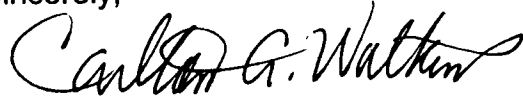
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

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.

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

If you wish to inquire about this ruling, please contact Mr. xxxxxx xxxxxxxx (ID Number xx-xxxxx) by phone at (xxx) xxx-xxxx or by fax at (xxx) xxx-xxxx. 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

cc: