



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

201026040

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 08 2010

Uniform Issue List: 402.00-00

SE: T: EP: RA: T1

Re: Control Number:

Legend:

Taxpayer A =

Taxpayer B =

Plan C =

Financial Institution D =

Roth IRA E =

Financial Institution F =

Financial Institution G =

Amount 1 =

Dear :

This is in response to a request for a private letter ruling dated January 25, 2010, as supplemented by additional information dated March 2, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from Plan C maintained with Financial Institution D.

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

Taxpayer A, age 65, at the time of the distribution of Amount 1 from Plan C, 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 F to follow Taxpayer

A's instructions. Taxpayer A further asserts that Amount 1 has not been used for any purpose.

Taxpayer A participated in Plan C, a tax sheltered annuity under section 403(b) of the Code. The assets of Plan C are held by Financial Institution D. On

Taxpayer A met with a representative of Financial Institution F and completed a form to open a traditional IRA under section 408(a) of the Code with Financial Institution F. In

, Amount 1 was distributed from Plan C. A check totaling Amount 1, made payable to Taxpayer A's IRA, was delivered to Financial Institution F. However, due to a clerical error, Amount 1 was deposited into Roth IRA E under section 408A of the Code instead of Taxpayer A's newly created traditional IRA. Subsequent to the deposit

of Amount 1, Financial Institution F reorganized and became known as Financial Institution G. The error was not discovered until By letter dated,

, Financial Institution G acknowledged that the check totaling Amount 1 was improperly coded causing it to be deposited into Roth IRA E instead of a traditional IRA. No taxes were paid on this transaction as it was assumed the deposit of Amount 1 would be to a traditional IRA, which would not be a taxable event until distributions were made. There have been no distributions or withdrawals from Roth IRA E subsequent to the deposit.

Based on the above facts and representations, you request 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.

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) of the Code 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)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

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) 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.

Section 401(a)(31) of the Code 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 sections 408(d)(3)(I) and 402(c)(3)(B) 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 is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was caused by an error by Financial Institution F.

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 1 from Plan C and Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 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 contributions, Amount 1 and 2 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.

If you wish to inquire about this ruling, please contact
(I.D. #), , at () - .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
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