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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

APR 12 2010

Uniform Issue List: 402.00-00

SET: EP: RA: TI

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**Legend:**

Taxpayer A = \*\*\*\*\*

Taxpayer B = \*\*\*\*\*

Amount 1 = \*\*\*\*\*

Amount 2 = \*\*\*\*\*

Amount 3 = \*\*\*\*\*

Amount 4 = \*\*\*\*\*

Amount 5 = \*\*\*\*\*

Amount 6 = \*\*\*\*\*

Financial Institution A = \*\*\*\*\*

Plan X = \*\*\*\*\*

Account Y = \*\*\*\*\*

Account Z = \*\*\*\*\*

Dear \*\*\*\*\*.

This is in response to your request dated \*\*\*\*\*, 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 and Taxpayer B are married taxpayers who file joint tax returns and assert that their failure to accomplish a rollover of Amount 3 and Amount 6 within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error on the part of Financial Institution A. Taxpayer A and Taxpayer B further represent that Amount 3 and Amount 6 have not been used for any other purpose.

Following their respective retirements, Taxpayer A and Taxpayer B decided to move Amount 1 and Amount 4, respectively, from Plan X, a qualified plan, to individual retirement accounts (IRAs). Amount 1 consists of Amount 2, which is the non-taxable portion, and Amount 3, which is the taxable portion. Amount 4 consists of Amount 5, which is the non-taxable portion, and Amount 6, which is the taxable portion. Taxpayer A and Taxpayer B each decided to open an account with Financial Institution A, and began the process of opening two IRAs via Financial Institution A's website. After some confusion with the site, Taxpayer A contacted Financial Institution A's customer service line to speak with a representative who could "walk him through" the process of opening two rollover IRAs. In the process of opening the accounts, the employee of Financial Institution A provided incorrect instructions which resulted in Taxpayer A opening two non-qualified accounts (Account Y and Account Z) instead of two IRA accounts, as Taxpayer A requested. Consequently, Amount 1 and Amount 4 were mistakenly deposited via direct rollover into Account Y and Account Z, respectively. Taxpayer A and Taxpayer B did not realize the accounts had been opened improperly until after the 60-day rollover period had expired. Taxpayer A and Taxpayer B assert that Amount 1 and Amount 4 have remained in Account Y and Account Z, respectively, and have not been used for any other purpose. Taxpayer A and Taxpayer B wish to roll over Amount 3 and Amount 6, respectively, which represent only the taxable portions of their distributions from Plan X.

Based on the above facts and representations, you request 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 3 and Amount 6 in this instance.

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 section 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) 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 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 and Taxpayer B is consistent with their assertion that their failure to accomplish a timely rollover of Amount 3 and Amount 6, respectively, was caused by an error on the part of Financial Institution A, resulting in the establishment of Account Y and Account Z as non-qualified, taxable accounts.

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 3 from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 into another qualified plan or rollover IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 3 will be considered a rollover contribution within the meaning of section 402(c) of the Code.

Additionally, 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 6 from Plan X. Taxpayer B is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 6 into another qualified plan or rollover IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 6 will be considered a rollover contribution within the meaning of section 402(c) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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 taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact \*\*\*\*\* (Identification Number  
\*\*\*\*\* ) at (\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to \*\*\*\*\*.

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1