

201029025



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 29 2010

U.I.L. 402.00-00

XXXX
XXXX
XXXX

SE: T: EP: RA: TY

Legend:

Taxpayer A = xxxx

IRA V = xxxx

Financial Institution G = xxxx

Financial Institution H = xxxx

Company C = xxxx

Employer D = xxxx

Plan Y = xxxx

Account P = xxxx

Amount N = xxxx

Amount O = xxxx

Year 1 = xxxx

Year 2 = xxxx

Date 1 = xxxx

Date 2 = xxxx

Dear xxxx:

This is in response to your letter dated June 16, 2009, as supplemented by correspondence dated October 13, 2009, and January 7, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code").

The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 49, received a distribution of Amount N from Plan Y on Date 1. Taxpayer A asserts that his failure to accomplish a rollover of Amount N within the 60-day period prescribed by section 402(c)(3) of the Code was due to hardship resulting from the convergence of concurrent financial transactions with applicable statutory deadlines for filing a number of tax returns in addition to the rollover of Amount N. Taxpayer A represents that Amount N has not been used for any purpose.

Taxpayer A represents that in Year 2, he commenced a series of transactions designed to consolidate his retirement interests by rolling them over into a single Individual Retirement Arrangement (IRA V). IRA V was maintained by Financial Institution H (and formerly by Financial Institution G).

As part of the series of transactions, which involved other retirement plans and another IRA, Taxpayer A requested a total distribution to him of the interests he had accrued under Plan Y.

Taxpayer A requested that a check be made payable to him and mailed to his home address. The check represented the net amount of the plan distribution after mandatory Federal tax withholding (Amount O).

Taxpayer A represents that on Date 2 he deposited the distribution check into a checking account, maintained by Company C, which he held jointly with his spouse (Account P), intending to write a separate check to the custodian of IRA V for the full amount of the distribution including taxes withheld.

The other rollover transactions that were part of the series of transactions were all completely timely.

Taxpayer A represents that the purpose of the consolidation of assets into IRA V was to liquidate a nonIRA investment, specifically shares in a Passive Foreign Investment Company (PFIC), and replace it with an IRA investment of comparable value.

Taxpayer A asserts that he was obligated to include the PFIC income in his Federal tax return filings for the Year 1 taxable year which caused preparation of his Federal tax return to be especially time consuming. Taxpayer A represents

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that the due date for Taxpayer A's Federal tax return filings for the Year 1 taxable year fell within 60 days of the date of the distribution of Amount N from Plan Y and that the preparation of such return occupied a considerable amount of his time.

Taxpayer A represents that, in addition to preparing his own tax returns during the 60-day rollover period for Amount N, he was winding up the financial affairs of his deceased father-in law which involved the filing of six tax returns dealing with individual income, trust income and estate matters. It is represented that although the due date for the filing of these returns occurred after the expiration of the 60-day period for the rollover of Amount N into IRA V, Taxpayer A was occupied with preparation of these filings during such 60-day period.

Taxpayer A asserts that, as a result of the number of similar transactions that occurred around the time of the distribution of Amount N plus his preoccupation with completing his tax returns, he lost track of the fact that he had not completed the rollover of the distribution of Amount N from Plan Y into IRA V.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution to Taxpayer A of Amount N from Plan Y.

Section 402(c)(1) 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 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, 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

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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.

Taxpayer A has not presented evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over Amount N, or any portion thereof, to an IRA. The ability of Taxpayer A to timely roll over Amount N of Plan Y to a rollover IRA was at all times within Taxpayer A's reasonable control.

Therefore, pursuant to section 402(c)(3) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount N (or any portion thereof) from Plan Y.

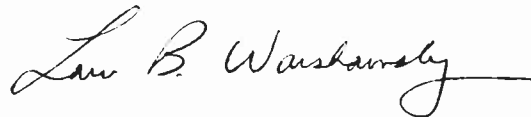
This ruling assumes that Plan Y satisfied the qualification requirements of section 401(a) of the Code at all times relevant to this transaction.

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 ruling 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 xxxx, I.D. # xxxx, by telephone at xxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose