

201031040



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

MAY 13 2010

Legend:

SE.T:EP:RA.T3

Taxpayer A:

Company M:

Plan X:

Amount L:

Account X:

Financial Advisor E:

Financial Institution A:

Month 5:

Date 1:

Date 2:

Year 1:

Dear :

This is in response to your letters dated October 26, 2009, February 25, 2010, and April 12, 2010, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) 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 on Date 2, subsequent to his retirement with Company M, Plan X issued a check in Amount L, payable to Financial Institution A as trustee FBO of Taxpayer A. Taxpayer A asserts that his failure to accomplish a direct rollover of Amount L within the 60 day period prescribed by section 402(c)(3)(A) of the Code was due to the error of Financial Advisor E.

On Date 1, Taxpayer A, age 59, signed an election form with Company M electing a rollover to Financial Institution A of a lump sum payment of his Plan X account balance.. On Date 2 Company M issued a check payable to Financial Institution A as trustee FBO of Taxpayer A.

Taxpayer A had many discussions with Financial Advisor E and consulted with her during Month 5 to discuss his retirement from Company M and the rollover of his Plan X account balance to an individual retirement account ("IRA") to be established with Financial Institution A.

Taxpayer A, after receiving the Date 2 check, followed specific directions from Financial Advisor E to endorse the check to Financial Institution A and to enclose his Date 2 check with an Account X deposit slip. Financial Advisor E assured Taxpayer A that she would arrange for the funds to be deposited into an IRA account.

During the Month 5 meeting with Financial Advisor E, Taxpayer A instructed Financial Advisor E to establish an IRA at Financial Institution A. Financial Advisor E, in error, failed to establish an IRA account at Financial Institution A to receive the anticipated direct rollover distribution check from Plan X which caused the funds to be deposited and to remain in a non-IRA account, Account X.

During Year 1 Plan X issued a Form 1099-R with a Distribution code "G" ("Direct rollover to a qualified plan, a 403(b) plan, a governmental 457 plan, or an IRA"). Taxpayer A believed that Financial Advisor E had effected a rollover of his Plan X retirement funds and did not learn of the failure until Taxpayer A and his accountant discovered the error when preparing Taxpayer A's federal income tax return for Year 1.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount L contained in section 402(C)(3)(A) of the Code

With respect to your request to waive to 60 day rollover requirement, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs. Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) 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

Revenue Procedure 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)(B), 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 provided by Taxpayer A is consistent with Taxpayer A's assertion that his failure to accomplish a rollover of Amount L within the 60-day period prescribed by section 402(c)(3)(A) of the Code was due to the error of Financial Advisor E.

Thus, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount L, or any portion thereof, to an IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, the contributed amounts will be considered rollover contributions within the meaning of section 402(c) of the Code.

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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.

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

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

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of Letter Ruling
Notice of Intention to Disclose