



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

201201018

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 402.00-00

T:EP:RA:T2

OCT 13 2011

Legend:

- Taxpayer A = ***
- Spouse B = ***
- Plan C = ***
- Financial Institution D = ***
- Account E = ***

- Financial Advisor X = ***

- Amount 1 = ***
- Amount 2 = ***
- Date 1 = ***
- Date 2 = ***
- Date 3 = ***
- Date 4 = ***
- Date 5 = ***

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Dear ***:

This letter is in response to your request dated April 27, 2011, as supplemented by correspondence dated September 26, 2011, submitted on your behalf by your authorized representative, in which you requested 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 have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age _____ represents that she received a distribution of Amount 1 from Plan C, a pension plan in which her deceased husband, Spouse B, was a participant. She asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 402(c)(3)(A) was due to her reliance on erroneous advice provided by Financial Advisor X. Taxpayer A represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that Spouse B died suddenly on Date 1. On Date 2, Plan C sent Taxpayer A a letter asking her to elect whether to receive her benefit from her husband's pension as a monthly payment or a lump sum distribution. Taxpayer A, who is disabled, represents that she was very distraught and overwhelmed over the sudden death of her husband, and that she contacted Financial Advisor X for help with understanding the Code section 402(f) Notice that she received from Plan C and for advice on what election to make. Financial Advisor X directed Taxpayer A to elect a lump sum distribution. He did not advise her to elect a rollover because he believed she may need to take withdrawals from Amount 1 on account of her disability. Taxpayer A was under age 59 ½ and therefore, generally, any withdrawals from an individual retirement account ("IRA") would be subject to the early distribution penalty. Financial Advisor X provided a signed, notarized statement explaining that when he advised Taxpayer A to take a lump sum distribution, he was not aware of the disability exception to the early withdrawal rule.

Relying on Financial Advisor X's advice, Taxpayer A completed Plan C's election form on Date 3, electing to receive her entire benefit as a lump sum distribution. On Date 4, Plan C deposited Amount 2 (Amount 1 less federal income tax withholding) into Taxpayer A's savings account, Account E, at Financial Institution D. Taxpayer A was unaware that Financial Advisor X had provided incorrect advice until Date 5, when she met with her income tax preparer.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan C.

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 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 402(c)(9) of the Code provides that if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection will apply as if the spouse was the employee.

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 her assertion that her failure to accomplish a timely rollover was caused by her reliance on erroneous advice provided by Financial Advisor X, which resulted in Amount 1 (less federal income tax withholding) being deposited into Account E, a non-IRA account.

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. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 to an IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount 1 into an IRA will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

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.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

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If you wish to inquire about this ruling, please contact ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: ***