



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 01 2011

201204025

Uniform Issue List: 402.00-00

T:EP:RA:T1

Legend:

Taxpayer A =

Company B =

Plan C =

Financial Institution D =

County E =

Financial Institution F =

IRA X =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

201204025

Dear :

This letter is in response to your request for a letter ruling dated May 11, 2011, as supplemented by additional correspondence dated July 13, 2011, and August 15, 2011, from your authorized representative, in which you requested 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 asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due, in part, to the failure of Plan C, or Company B, or Financial Institution D to provide proper written notice regarding the rollover rules and tax consequences of the gross distribution of Amount 4 from Plan C, as required by section 402(f) of the Code. In addition, Taxpayer A asserts that he failed to complete a timely rollover due, in part, to the incorrect advice he received from his tax advisor.

Taxpayer A was employed by Company B for approximately nine years. During his employment, Taxpayer A participated in Plan C, a qualified employee retirement plan sponsored by Company B and managed by Financial Institution D. Taxpayer A left Company B in **** when he became employed by County E. Taxpayer A represents that in **** Company B was acquired by another entity at which time Plan C was terminated and the retirement trust account funds were distributed to the plan participants. Taxpayer A left his retirement account untouched from the beginning of his participation in Plan C until he received a distribution check in the amount of Amount 1 on or about *****. Amount 1 represented the net distribution due Taxpayer A (Amount 4 less Amounts 2 and 3, federal and state tax withholdings, respectively). On or about *****, Taxpayer A contacted his tax advisor to obtain information with respect to rolling over the check. His tax advisor incorrectly informed him that he was still within the rollover period and could make a valid rollover of the check into an IRA. Taxpayer A deposited the check in the amount of Amount 1 on *****, in IRA X, a qualified Individual Retirement Account ("IRA") maintained by Financial Institution F.

Taxpayer A did not include Amount 4 in gross income on his **** Form 1040 because, absent written notice from Plan C, Company B, or Financial Institution D regarding the rollover rules and due to the incorrect advice he received from his tax advisor, he believed he had completed a timely rollover of the distribution. On *****, Taxpayer A received an income tax refund for **** relating to the Amount 2 withholdings on Amount 4. Taxpayer A deposited the Amount 5 refund check into IRA X on *****. As with the deposit of the Amount 1

distribution check into IRA X, Taxpayer A was following the same incorrect tax advice with respect to the timing of the deposit of the refund check into IRA X.

On *****, Taxpayer A received a notice from the Internal Revenue Service ("Service") stating that Amount 4 was taxable income for the **** tax year based on the position that Taxpayer A had not completed a rollover of the distribution within the 60-day time requirement. Taxpayer A represents that this was the first time he learned that Amounts 1 and 5 had not been deposited into IRA X in a timely manner.

In a letter dated *****, from the Service, Taxpayer A was informed that he would have to request a letter ruling, pursuant to Revenue Procedure 2003-16, in order to receive a waiver of the 60-day rollover period.

Based on the above facts and representations, Taxpayer A has requested a ruling that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the gross distribution of Amount 4 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) 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)(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 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)(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 documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due both to the failure of Plan C, or Company B, or Financial Institution D to provide proper written notice regarding the rollover rules as required by section 402(f) of the Code, and to the incorrect information Taxpayer A received from his tax advisor. Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the gross distribution of Amount 4 from Plan C. Noting that Amounts 1 and 5 have already been contributed to IRA X and provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute to IRA X Amount 6 (Amount 4 less the sum of Amount 1 and Amount 5), and the total of Amounts 1, 5, and 6 (equaling Amount 4) 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.

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

201204025

If you wish to inquire about this ruling, please contact ***** (Identification Number *****), ***** at *****. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: