



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

201222051

MAR 09 2012

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 402.00-00

T:EP.RA:T1

Legend:

Taxpayer A	=
Plan B	=
Account C	=
Financial Institution D	=
IRA E	=
Amount 1	=

Dear :

This letter is in response to a request for a letter ruling dated September 29, 2011, as supplemented by additional information dated January 10, 2012, from your authorized representative, 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"), regarding the distribution of Amount 1 from Plan B.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 57, represents that he took a distribution of Amount 1 from Plan B. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3)(B) of the Code was the result of being preoccupied with recovering several of his household items which were lost when he moved following his retirement.

Taxpayer A, moved from New Orleans, Louisiana to Portsmouth, Virginia on August 25, 2010. During the move, several items of furniture were lost. On August 31, 2010, Taxpayer A retired. On October 28, 2010, Taxpayer A received a distribution of Amount 1 from Plan B. He immediately deposited the check for Amount 1 into Account C, a non-IRA account with Financial Institution D. Taxpayer A indicated that he intended to rollover this amount into an individual retirement account (IRA). His deadline to roll over Amount 1 into an eligible retirement plan was December 27, 2010. During the period from the move in August until a settlement was reached with the moving company in early February, 2011, Taxpayer A indicates he spent several months making numerous telephone calls and writing letters in his attempt to locate the missing items. Taxpayer A maintains that his preoccupation with the missing items and the Christmas holiday period caused him to forget the rollover deadline.

On December 31, 2010, 4 days beyond the rollover deadline, Taxpayer A went to a local branch of Financial Institution D to complete the rollover of Amount 1 into an IRA. However, it was closed for the New Year's Holiday. When he returned on January 3, 2011, Taxpayer A completed an application to open a rollover IRA (IRA E) with Financial Institution D and transferred Amount 1 into this newly opened account. Shortly thereafter, when he met with his tax return preparer, Taxpayer A was informed he missed his rollover deadline.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(B) of the Code with respect to Amount 1.

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 402(d)(6) of the Code provides that any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

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 408(d)(3)(I) 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.

Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to rollover Amount 1 on a timely basis. Taxpayer A stated that the ordeal of losing many of his personal belongings during his move from New Orleans, Louisiana to Portsmouth, Virginia and the subsequent time and energy spent attempting to recover them interfered with Taxpayer A's management of his financial affairs. However, Taxpayer A had over two months to deal with this problem prior to taking the distribution of Amount 1 from Plan B. The loss of his possessions did not affect his ability to take a distribution. Therefore, it did not constitute an event beyond his reasonable control. The information presented indicates that the failure to rollover Amount 1 into an IRA within the 60-day rollover period was, at all times, within the reasonable control of Taxpayer A.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B and thus Amount 1 will not be considered a valid rollover contribution within the meaning of section 402(c)(3)(B) of the Code, because the 60-day rollover requirement was not satisfied.

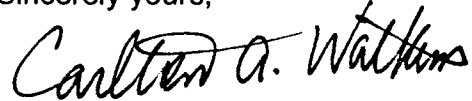
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

**201222051**

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 (I.D. # ), , at ( ) .

Sincerely yours,

A handwritten signature in black ink that reads "Carlton A. Watkins". The signature is written in a cursive style with a large, stylized "C" and "W".

Manager  
Employee Plans Technical Group 1

cc: