



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201226036

APR 03 2012

Uniform Issue List: 402.00-00

T:EP:RAIT1

Legend:

Taxpayer A	=
Company B	=
Plan C	=
Financial Institution E	=
Individual F	=
Firm G	=
Financial Institution H	=
Financial Institution I	=
Financial Institution J	=
Account K	=
Account L	=
Account M	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Amount 5	=

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Dear :

This letter is in response to a request for a letter ruling dated February 18, 2011, as modified and supplemented by additional correspondence dated May 26 and 27, 2011, November 15 and 28, 2011, and March 6 and 7, 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 distributions of Amount 1 and Amount 2 from Plan C.

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

Taxpayer A, who had attained age 59 ½ at the time of distribution of Amount 1 from Plan C, asserts that her failure to accomplish rollovers of Amounts 1 and 2 within the 60-day period prescribed by section 402(c)(3) of the Code was due to her reliance on fraudulent information provided by Individual F of Firm G.

Taxpayer A participated in Plan C, a profit sharing plan under section 401(a) of the Code, maintained by Company B. Funds in Plan C were held by Financial Institution E. Taxpayer A represents that in September, 2009, she met with Individual F, of Firm G, to discuss opening an individual retirement account (IRA) with Financial Institution H. On or about October 7, 2009, Taxpayer A received a distribution of Amount 1 from Plan C. The check for Amount 1 was given to Individual F who knowingly deposited it into Account K with Financial Institution H on October 12, 2009. Account K, however, was not an IRA Account as Taxpayer A had intended. Instead, Account K was a consolidated deposit account containing funds of several clients of Firm G. Individual F then contacted Taxpayer A and assured her that he was able to set up the rollover IRA into which he said he had deposited Amount 1.

In January, 2010, Taxpayer A had a telephone conversation with Individual F to discuss rolling over a distribution of Amount 2 from Plan C. The check for Amount 2 was dated January 19, 2010. It was delivered to Individual F's office (Firm G) and was deposited into Account K on January 22, 2010. After March 19, 2010, all of the funds in Account K were transferred to a similar account established at Financial Institution I.

Soon thereafter, Taxpayer A became suspicious over the failure by Firm G to produce deposit slips showing deposits of Amounts 1 and 2 into a rollover IRA. Taxpayer A was able to recover Amounts 3 and 4 from Financial Institution I, on July 16 and August 19, 2010, respectively. Both Amounts 3 and 4 were deposited by Taxpayer A into Account L maintained with Financial Institution J and subsequently were transferred to Account M.

On November 29, 2010, Taxpayer A met with Federal investigators to discuss the activities of Individual F and Firm G. She was advised that Individual F and Firm G were being investigated for possible criminal violations.

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 the distribution of Amounts 1 and 2.

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 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 sections 408(d)(3)(I) and 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.

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The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish timely rollovers of Amounts 1 and 2 was due to having been misled by Individual F and Firm G into believing that both amounts had been deposited into an IRA.

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 Amounts 1 and 2 from Plan C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 5 (Amount 1 plus Amount 2) into an eligible retirement plan or rollover 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 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.

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,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: