



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

201228043

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 19 2012

Uniform Issue List: 402.00-00 and 457.00-00

T:EP:RA:T1

Legend

- Taxpayer A =
- Plan B =
- State C =
- IRA D =
- Account E =
- Amount F =
- Amount G =
- Financial Institution L =
- Bank M =
- Country N =

Dear :

In a letter dated July 8, 2011, you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the "Code").

You submitted, under penalty of perjury, the following facts and representations in support of your request for a waiver.

Taxpayer A represents that he received a distribution of Amount F from Plan B, a 457(b) plan maintained by State C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3)(A)

of the Code was due to a combination of events, including incomplete information provided by Financial Institution L to Taxpayer A regarding his ability to roll over a portion of Amount F, Amount G, via an online transfer.

On May 7, 2010, Taxpayer A received a net distribution from Plan B equal to Amount F, which was deposited into Account E, a non-IRA account maintained with Bank M. Taxpayer A intended to use a portion of the distribution from Plan B to purchase a primary residence in a foreign country, Country N, and to roll over the remaining amount, Amount G, to an existing IRA, IRA D, maintained with Financial Institution L. At the end of June, 2010, he contacted Financial Institution L to inquire about making an online transfer of Amount G from his checking account to IRA D. Financial Institution L informed Taxpayer A that such a transfer could be made online. On July 6, he prepared the online application and attempted to transfer Amount G to IRA D. However, he received an error message stating that the actual transfer from Account E to IRA D must be made by a personal check. Taxpayer A immediately prepared the paperwork and sent it through an express international courier to Financial Institution L. On July 14, 2010, approximately a week following the expiration of the 60-day rollover period, Amount G was deposited into IRA D.

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

Section 457(e)(16)(A) of the Code provides , in relevant part, that if any portion of the balance to the credit of an employee in such plan is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an eligible retirement plan described in section 402(c)(8)(B), then such distribution (to the extent so transferred) will not be includible in the gross income of the employee in the taxable year that the distribution is paid.

Section 457(e)(16)(B) of the Code provides that rules similar to rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of section 457(e)(16)(A).

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which 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 (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified employees' trust is paid to the employee in an eligible rollover distribution and the employee 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, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(3)(A) of the Code provides, generally, that section 402(c)(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 subparagraph (A) 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 occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Section 402(c)(8) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible

employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, 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 and documentation submitted by Taxpayer A is consistent with his assertion that he attempted to roll over Amount G into IRA D but that due to incomplete information he received from Financial Institution L regarding his ability to transfer Amount G in an online transaction and other factors, he was unable to complete a timely rollover. Consequently, Amount G was not deposited into IRA D until July 14, 2010, approximately a week after the expiration of the 60-day period.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the rollover of Amount G from the distribution of Amount F. Provided all other requirements of section 402(c), except the 60-day rollover requirement, are met with respect to the July 14, 2010, contribution of Amount G to IRA D, Amount G will be considered a rollover contribution within the meaning of section 402(c)(1).

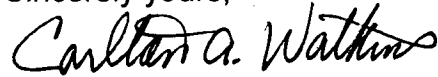
Please note that, pursuant to section 402(c)(4)(B) of the Code, this ruling does not authorize the rollover of minimum distributions required under section 401(a)(9).

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 that may be applicable hereto.

This ruling is directed solely 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 have any questions regarding this ruling, you may contact

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Notice of Intention to Disclose
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