



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

201242024

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 26 2012

Uniform Issue List: 402.00-00

T:EP:RA:T1

Legend:

Taxpayer A =

Company B =

Plan C =

Financial Institution D =

Account E =

Financial Institution F =

Account G =

Financial Institution H =

Amount 1 =

Dear :

This letter is in response to a request for a letter ruling dated January 29, 2012, as modified and supplemented by additional correspondence dated April 18, May 11, May 24, and July 9, 2012, submitted by 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 C.

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

Taxpayer A, age 47 at the time of distribution of Amount 1 from Plan C, asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to a failure by Company B to follow his written instructions that Amount 1 be deposited into an individual retirement account (IRA). Taxpayer A further represents that Amount 1 has not been used for any purpose.

Taxpayer A participated in Plan C, a cash or deferred arrangement under sections 401(a) and 401(k) of the Code, maintained by Company B. Funds in Plan C were held by Financial Institution D. Taxpayer A represents that on March 24, 2009, he opened Account E, a non-IRA investment account with Financial Institution F. In the later part of 2010, he terminated employment with Company B. On January 26, 2011, he requested a distribution of his account balance in Plan C. On the application for the distribution, Taxpayer A indicated that the distribution for Amount 1 was to be rolled over to his IRA with Financial Institution F. Not familiar with transactions of this nature, on the distribution request form, Taxpayer A entered Account E. The check dated February 2, 2011, was made payable to "Financial Institution F FBO Taxpayer A." and mailed directly to Financial Institution F. Taxpayer A thought this meant that Amount 1 would be deposited into an IRA. The employee who processed Taxpayer A's distribution request form failed to notice he requested that Amount 1 be deposited into an IRA, thus the check was not made payable to Taxpayer A's IRA. The 1099 issued by Plan C indicated the distribution was a direct rollover to an IRA. On August 27, 2011, Taxpayer A suffered a debilitating stroke. In October, 2011, while gathering Taxpayer A's financial affairs, his power-of-attorney discovered a note that indicated the funds in Account E were a rollover IRA from Plan C. The power-of-attorney contacted Plan C who provided a copy of the distribution form signed by Taxpayer A that clearly indicates he elected a direct rollover to an IRA. On October 7, 2011, to consolidate Taxpayer A's assets, the funds were transferred by his power-of-attorney to Account G, a non-IRA investment account with Financial Institution H.

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 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 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.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was due to a failure by Employer B to follow his instructions that Amount 1 be 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 Amount 1 from Plan C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 into an eligible retirement plan. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 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.

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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. #) , () .

Sincerely yours,

Carlton A. Wathen

Manager
Employee Plans Technical Group 1

Enclosures:

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

cc: