



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201246041

AUG 24 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	=
Financial Advisor G	=
Roth IRA H	=
Roth IRA I	=
Account J	=
Financial Institution K	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=

Amount 5 =

Amount 6 =

Dear :

This letter is in response to a request for a letter ruling dated August 31, 2011, as supplemented by additional correspondence dated December 15, 2011, and August 2, and 14, 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 4 from Plan C.

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

Taxpayer A represents that she received a distribution of Amount 1 from Plan C. Taxpayer A asserts that her failure to accomplish a rollover of Amount 4, a portion of Amount 1, within the 60-day period prescribed by section 402(c)(3) was due to the failure of Financial Advisor G to follow Taxpayer A's instructions. Taxpayer A further represents that Amount 4 has not been used for any purpose.

Taxpayer A represents that she participated in Plan C, a profit sharing and cash or deferred savings plan 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 retired on December 30, 2009. On February 1, 2010, Taxpayer A took a total distribution of Amount 1 from Plan C. On February 17, 2010, she deposited Amount 2 in Account E, a regular investment account with Financial Institution F. To preserve the nontaxable status of the money, Taxpayer A intended to deposit Amount 2 into an individual retirement account (IRA) as soon as she decided where to invest the funds.

In early March of 2010, Taxpayer A called Financial Advisor G of Financial Institution K, and informed him of her intent to have the money in Account E rolled into a qualified retirement account before April 1, 2010, so that the money would not be includible in her gross income for federal tax purposes in 2010. After speaking with Financial Advisor G, Taxpayer A withdrew her funds from Account E on March 12, 2010, and deposited the check for Amount 3, which included a small amount of interest on Amount 2, into her personal bank account. Subsequently, on March 23, 2010, Taxpayer A gave Financial Advisor G a personal check for Amount 4, which represented most of Amount 2, made payable to Financial Institution K, again instructing him to complete the rollover of Amount 4 into a qualified retirement account before April 1, 2010. Financial Advisor G assured Taxpayer A that the rollover of Amount 4 would be timely performed.

On March 24, 2010, contrary to Taxpayer A's instructions, Financial Advisor G opened Roth IRA H and Roth IRA I (both maintained with Financial Institution K) in the individual names of Taxpayer A and her husband, respectively. From Amount 4, Financial Advisor G made contributions of Amount 6 into Roth IRA H and Roth IRA I for the 2009 and 2010 taxable years. Financial Advisor G deposited the remaining amount (Amount 5) into non-IRA Account J in Taxpayer A's name with Financial Institution K.

In March 2011, upon preparation of Taxpayer A and her spouse's 2010 federal tax return, their certified public accountant (CPA) examined the Form 1099-R issued to Taxpayer A and determined that Amount 4 had not been rolled over to a nontaxable account as Taxpayer A had intended. Taxpayer A told her CPA that she specifically instructed Financial Advisor G to deposit Amount 4 into a qualified retirement account. The CPA contacted Financial Advisor G and confirmed that Financial Advisor G had not rolled over Amount 4 into a qualified retirement account within the 60-day rollover period of Code section 402(c), as instructed by Taxpayer A.

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)(A) of the Code with respect to the distribution of Amount 4.

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)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

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.

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 her assertion that her failure to accomplish a timely rollover of Amount 4 was due to the failure of Financial Advisor G to follow Taxpayer A's instructions. Instead of depositing Amount 4 into a traditional IRA before the expiration of the 60-day rollover period to preserve its nontaxable status, Financial Advisor G opened Roth IRA H for Taxpayer A and Roth IRA I for Taxpayer A's spouse, made taxable contributions of Amount 6 to each Roth IRA for the 2009 and 2010 taxable years, and placed the rest of the funds in non-IRA Account J.

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 4. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 4 into a rollover IRA or other eligible retirement plan. Provided all other requirements of section 402(c) 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) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) 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: