



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201302043

OCT 19 2012

Uniform Issue List: 402.00-00

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

T:EP:RA:T2

Legend:

Taxpayer A = XXXXXXXXXXXX  
Financial Institution M = XXXXXXXXXXXX  
Plan X = XXXXXXXXXXXX  
XXXXXXXXXX  
Account G = XXXXXXXXXXXX  
XXXXXXXXXX  
Website B = XXXXXXXXXXXX  
Amount S = XXXXXXXXXXXX  
Date 1 = XXXXXXXXXXXX  
Date 2 = XXXXXXXXXXXX  
Date 3 = XXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your request dated February 23, 2012, as supplemented by correspondence dated July 23, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

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

Taxpayer A, under age 59 ½, was a participant in Plan X, her employer's defined benefit pension plan. Taxpayer A represents that on Date 2 she requested a distribution of Amount S from Plan X and that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to confusion over the title of the account she established through Website B causing an unintended deposit to a non-IRA account. Taxpayer A further represents that Amount S has not been used for any other purpose.

On Date 1, Taxpayer A established Account G on Website B (Financial Institution M's website) for the purposes of rolling over her account balance in Plan X to an IRA. Based on information from Website B and the name of the fund that Account G was invested in, Taxpayer A believed Account G was an IRA. On Date 2, Taxpayer A completed forms required by Plan X to distribute Amount S from Plan X and rollover the funds to Account G and checked the box on the forms indicating she wished to transfer the amounts to an IRA. On Date 2, Amount S was transferred from Plan X to Account G. On Date 3, Taxpayer A received a notice that Plan X had transferred Amount S to Account G as a rollover.

Taxpayer A became aware that Account G was not an IRA and that an improper distribution had occurred in the January immediately following the rollover when she received the Form 1099-DIV from the Internal Revenue Service (the "Service"). Upon learning of the improper distribution, Taxpayer A discussed the situation with Financial Institution M which advised her that although she could invest in an IRA through the same mutual fund that Account G was a part of, Account G was not an IRA. They determined that the funds could not be rolled back into an IRA account because the 60-day rollover period had passed.

Based upon the above facts and representations, Taxpayer A now requests that the Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount S.

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 sections 402(c) 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) provides the rules for governing "direct transfers of eligible rollover distributions."

Section 1.401(a)(31)-1 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 402(c)(3) 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 documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount S within the 60-day period prescribed by section 402(c)(3) of the Code was due to confusion over the titling of Account G established through Website B causing an unintended deposit to a non-IRA account. Taxpayer A, as evidenced by her completed Plan X withdrawal forms, clearly intended to rollover Amount G into an IRA. Further, the title of Account G could reasonably lead Taxpayer A to believe it was 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 S from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount S into an IRA otherwise meeting the requirements of section 408 of the Code. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement,

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are met with respect to such contribution, Amount S will be considered a rollover contribution within the meaning of section 402(c)(3) 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.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID \*\*\*\*\* ) at (\*\*\* ) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose