



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

DEC 17 2012

Uniform Issue List: 402.00-00

T:EP:RA:T3

Legend:

Taxpayer A =

Plan X =

IRA Y =

Financial Institution P =

Financial Institution M =

Amount M =

Amount N =

Amount O =

Dear :

This is in response to your request dated March 7, 2012, as supplemented by correspondence dated September 20, 2012, in which you request a waiver of the 60-day rollover requirement under 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, represents that she received a distribution from Plan X, totaling Amount O. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period

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prescribed by section 402(c)(3) of the Code was due to an error by Financial Institution P.

On December 20, Taxpayer A requested a lump sum distribution from Plan X. Taxpayer A intended to rollover Amount O (Amounts M and N) into a rollover Individual Retirement Account (IRA) with Financial Institution M. Taxpayer A requested that Financial Institution P issue checks payable to Financial Institution M as Custodian FBO Taxpayer A. A check from Plan X was issued on January 20, 2001, totaling Amount M payable to Financial Institution M as custodian FBO Taxpayer A and a second check was issued on January 20, 2001, for Amount N. Both checks were mailed to Taxpayer A's parent's summer home. Taxpayer A took appropriate steps to follow up with the Plan X administrator to inquire about the overdue checks and finally learned that the checks were mailed to an incorrect address by Financial Institution P.

Taxpayer A was able to retrieve the Plan X checks on March 20, 2001, shortly after the end of the 60-day rollover period and on the same day brought the checks to Financial Institution M where they were deposited into IRA Y.

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

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) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property distributed. 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) 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.

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Section 401(a)(31) 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 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 timely rollover was due to an error by Financial Institution P.

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 O. The contribution of Amount O into IRA Y will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code, provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution.

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.

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

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If you have any questions, please contact
SE:T:EP:RA:T:3

Sincerely yours,

A handwritten signature in black ink, appearing to read "Laura B. Warshawsky". The signature is fluid and cursive, with a prominent initial "L" and "W".

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose