



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201315035

JAN 17 2013

Uniform Issue List: 402.00-00

T:EP:RA:TI

Legend:

Taxpayer A	=
Decedent B	=
Company C	=
Plan D	=
Account F	=
Financial Institution G	=
Account H	=
Financial Institution I	=
IRA 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 10, 2011, as supplemented by correspondence dated February 16, May 7, October 31, and November 27, 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 D.

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 D. The actual amount of the check was Amount 4 (Amount 1 less federal and state tax withholdings of Amounts 2 and 3, respectively). Taxpayer A asserts that her failure to accomplish a rollover of Amount 4 within the 60-day period prescribed by section 402(c)(3)(A) of the Code was due to Taxpayer A's mental condition following the death of her spouse, Decedent B, which impaired her ability to make financial decisions during the 60-day period. Taxpayer A further represents that Amount 4 has not been used for any other purpose.

Decedent B was primarily responsible for financial matters for the family prior to his death. Decedent B died unexpectedly in May of 20 . . . Through his work with Company C, Decedent B had participated in Plan D, a qualified retirement plan. On July , 20 , as surviving spouse, Taxpayer A received a net distribution (Amount 4) of Decedent B's account balance in Plan D. On July , 20 , Taxpayer A deposited Amount 4 into a savings account (Account F) with Financial Institution G. On August , 20 , Taxpayer A withdrew Amount 5 (which includes Amount 4) from Account F with Financial Institution G. On September , 20 , after the expiration of the 60-day rollover period, Taxpayer A met with a representative of Financial Institution I and deposited Amount 5 into component parts (Checking Account and Premier Savings Account) of Account H with Financial Institution I. On December , 20 , after Taxpayer A's financial advisor discovered that Account H was not an IRA, Taxpayer A wrote a check for Amount 6, drawn on Account H, and deposited it into IRA J with Financial Institution K on December , 20 .

Taxpayer A experienced emotional trauma during the months following the sudden death of Decedent B. Taxpayer A has also represented that she faced both a probate challenge from Decedent B's family and possible foreclosure on her primary residence. Taxpayer A asserts that as a result of her unfamiliarity with financial transactions and the stressful events following Decedent B's death, she was unable to accomplish a timely rollover of Amount 4.

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 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.

Section 402(d)(6) of the Code provides that any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

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 408(d)(3)(I) 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 her unfamiliarity with financial affairs and the personal and emotional stress she experienced following the death of her husband (Decedent B).

Therefore, pursuant to section 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 4 from Plan D and provided all other requirements of section 402(c) of the Code, except the 60-day requirement, were met with respect to the contribution not in excess of Amount 1 into IRA J on December , 20 , such contribution will be considered a rollover contribution within the meaning of section 402(c) 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 ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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

cc: