



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

201318081

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

FEB 06 2013

Uniform Issue List: 402.00-00

Legend:

T: EP: RA: T3

Taxpayer A:

Bank M:

Individual J:

Financial Institution T:

Amount S:

Amount R:

Amount Q:

Amount F:

Amount D:

Amount T:

Amount K:

Amount L:

Plan Y:

Account M:

IRA X:

Dear

This is in response to a request dated September 22, 2011, as supplemented by correspondence dated September 13, 2012, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (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 Y totaling Amount R. Taxpayer A asserts that her failure to accomplish a rollover of Amount K (a portion of Amount R) within the 60-day period prescribed by section 402(c)(3) was due to the failure of Financial Institution T to follow Taxpayer A's instructions. Taxpayer A further represents that the remainder of the distribution from Plan Y, Amount D, has not been used for any other purpose.

Taxpayer A was an employee at Bank M, but lost her job due to a bank merger and decided to take a distribution from her former employer's 401(k) plan, Plan Y.

On November , 20 , Taxpayer A had a telephone conversation with Individual J, a representative of Financial Institution T, Plan Y's third party administrator. Taxpayer A informed Individual J that she needed Amount S, and told Individual J that she wanted Amount K (the remainder of her account, minus an offset for an outstanding plan loan, Amount Q) rolled over to an Individual Retirement Account (IRA).

Taxpayer A understood that the distribution of Amount S and the loan offset of Amount Q would be taxable income to her.

Individual J set up two accounts for Taxpayer A, one was a regular brokerage Account, Account M, and the other was an IRA account, IRA X. Individual J did not make it clear to Taxpayer A that only Amount F, a small percentage of the amount instructed to be rolled over, was being transferred to IRA X with the balance of the distribution, Amount D, being transferred to the regular brokerage account.

Taxpayer A subsequently received a Form 1099-R from Plan Y for 20 showing a gross distribution of Amount R and a taxable amount of Amount T. Taxpayer A was unaware that Financial Institution T failed to follow her instructions until her tax return preparer informed her that she owed Amount L in tax because the amount she intended to rollover from her account with Plan Y was not rolled over to IRA X.

Taxpayer A asserts that the failure to roll over the Amount K distribution within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Financial Institution T to follow Taxpayer A's instructions.

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

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 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) of the Code.

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)-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 timely rollover was caused by the failure of Financial Institution T to follow Taxpayer A's instructions.

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 K from Plan Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount K into a Rollover IRA. 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 K 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.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you have any questions, please contact

Please address all correspondence to

SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

cc: