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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAR 14 2013

Uniform Issue List: 402.08-00, 403.05-00

T:EP:RA:T1

Legend:

- Taxpayer A =
- 403(b) Annuity B =
- Company C =
- IRA D =
- Company E =
- Firm F =
- Amount 1 =
- Amount 2 =

Dear

This is in response to your request dated March 5, 2012, as supplemented by correspondence dated August 21, 2012 and February 16, 2013, in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("Code"), as applicable to an annuity described in Code sections 403(b).

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 403(b) Annuity B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover of Amount 2, a portion of Amount 1, within the 60-day period prescribed by section 402(c)(3), and made applicable to her situation pursuant to Code section 403(b)(8), was due to her reliance on the misinformation provided by Company C. Taxpayer A further represents that Amount 2 has not been used for any other purpose.

Taxpayer A maintained 403(b) Annuity B, a qualified retirement annuity with Company C. This annuity was established in 1995 when Taxpayer A left her job as a teacher. In late 2008, Taxpayer A began planning for retirement and a consolidation of her retirement accounts. Taxpayer A requested a surrender of the policy with Company C and sought to rollover 403(b) Annuity B into IRA D with Company E. Taxpayer A opened IRA D, an individual retirement account, with Company E and completed paperwork for a direct rollover but Company E requested proof that the funds were from a qualified plan. At that time, Taxpayer A did not remember the source of the funds in 403(b) Annuity B and sought assistance from a representative with Company C. Company C was in a bankruptcy protection program at that time and because of inconsistent information from Company C, Taxpayer A sought the assistance of her financial advisor with Firm F. Taxpayer A and her financial advisor had numerous conversations with representatives of Company C during the first half of 2009. In June 2009, after the unexpected distribution Amount 1 from Company C, a representative of Company C was told that proof of tax qualification of the funds was needed to complete a rollover. The representative told Taxpayer A and her financial advisor that the funds did not need to be rolled into an IRA as the funds were not taxable upon distribution. Taxpayer A's financial advisor specifically asked how the 2009 1099-R would be coded and was told the proceeds would not be taxable. Taxpayer A also received a letter from Company C indicating that the cost basis in the policy was more than the surrender amount and therefore, there was no gain at the time of surrender. Based on this information, Taxpayer A's financial advisor with Firm E advised her she did not need to rollover any of the distribution. Taxpayer A and her financial advisor were not aware that this determination was incorrect until she received a 1099-R totaling Amount 2 in early 2010. On June 14, 2010, Taxpayer A, after receiving inconsistent information from Company C on why the 1099-R amount was different from the distribution amount, transferred Amount 2 into IRA D with Company E.

Based on the facts and representations, a ruling has been requested 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 2.

Section 403(a)(5) of the Code provides that the rules of section 402(c)(2) through (7) shall apply for the purposes of section 403(b)(8).

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. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

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.

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 her and her financial advisor's reliance on the misinformation provided by a representative of Company D which resulted in Amount 1 being deposited into a non-IRA account.

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 2, a portion of Amount 1, from 403(b) Annuity B. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, were met with respect to Taxpayer A's contribution of Amount 2 into IRA D on June 14, 2010, such contribution will be considered a rollover contribution for purposes of sections 402(c)(3) and 403(b)(8) 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 \_\_\_\_\_ (Identification  
No. \_\_\_\_\_) at ( \_\_\_\_\_ ) . Please address all correspondence to  
SE:T:EP:RA:T1.

Sincerely,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose

CC: