



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201346013

AUG 19 2013

Uniform Issue List: 402.08-00

SE:T:EP:RA:T2

Legend:

Taxpayer	=	***
Spouse	=	***
Financial Institution	=	***
Amount A	=	***
Amount B	=	***
Amount C	=	***
Plan X	=	***

Dear ***:

This is in response to your request received October 4, 2012, as supplemented by correspondence received November 15, 2012, February 8, 2013, March 4, 2013, March 14, 2013, July 9, 2013, and July 18, 2013, 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 penalties of perjury in support of the ruling requested.

Taxpayer represents that she received a distribution from her deceased Spouse's account in Plan X. Taxpayer asserts that her failure to accomplish a rollover of the distribution within the 60-day period prescribed by section 402(c)(3) was due to the fact

that she had not requested the distribution and did not receive the statutorily required notice of the tax consequences and her rollover rights regarding the distribution. Taxpayer further represents that the distribution has not been used for any other purpose.

Taxpayer was the beneficiary of Spouse's interest in Plan X, which is represented to be a qualified retirement plan under section 401(a) of the Code. Pursuant to Plan X's terms, Plan X made a mandatory distribution of Spouse's interest in Plan X to Taxpayer on May 16, 2011, one year after Spouse's death. Taxpayer received Amount B, after Plan X withheld Amount C for federal withholding taxes. Taxpayer had not requested the distribution and represents that she did not receive a notice from Plan X explaining the distribution and its tax consequences and her rollover rights.

Upon receiving the unrequested distribution of Amount B from Plan X, Taxpayer gave Amount B to Financial Institution, with whom Spouse and Taxpayer had other non-retirement accounts. Taxpayer represents that she intended to maintain Amount A in a manner consistent with the tax treatment such interest received in Plan X and had no intent or expectation of receiving a distribution from Plan X. Because the distribution was not requested and she did not receive the proper notice regarding it, she did not know how to instruct Financial Institution on what to do with the funds received. Financial Institution simply deposited Amount B in Taxpayer's regular non-retirement account on May 27, 2011. Taxpayer has not used the funds and Amount B remains in Taxpayer's non-retirement account.

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

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).

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 (regarding required distributions).

Section 402(f) of the Code provides that a plan administrator, before making a distribution that is eligible for rollover, shall provide a written explanation to the recipient of the tax consequences of the distribution and the recipient's right to rollover the distribution within 60 days.

Revenue Procedure 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 is consistent with her assertion that her failure to accomplish a timely rollover was caused by the fact that she had not requested the distribution and did not receive the statutorily required notice of the tax consequences and her rollover rights regarding the distribution.

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 A from Plan X. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a rollover IRA. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount A will be considered a rollover contribution within the meaning of section 402(c)(3).

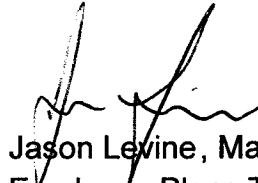
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (regarding required distributions).

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.

Pursuant to the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact ***** at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: ***

