



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201403025

OCT 22 2013

Uniform Issue List: 402.08-00

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Legend:

Taxpayer = \*\*\*  
Financial Institution = \*\*\*  
Amount = \*\*\*  
Plan = \*\*\*

Dear \*\*\*:

This is in response to your request dated October 19, 2012, as supplemented by correspondence dated April 8, 2013, August 19, 2013, and September 17, 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 the Plan totaling Amount. Taxpayer asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error committed by Financial Institution. Taxpayer further represents that Amount has not been used for any other purpose.

Taxpayer was a participant in the Plan. When she retired in 2010, she requested a trustee-to-trustee transfer of her interest in the Plan totaling Amount into an IRA with Financial Institution. The Plan transferred Amount on December 18, 2010. Financial Institution represented that it received Amount from the Plan but instead of depositing

Amount into an individual retirement account (IRA) as Taxpayer requested, Financial Institution deposited Amount in a regular non-IRA savings account. Financial Institution further represented that it discovered its error after the period in which it could have corrected the error on its own, and subsequently advised Taxpayer of the need to seek a waiver of the 60-day rollover requirement.

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.

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 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) of the Code (regarding required distributions).

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).

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.

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, including Financial Institution admitting its error in depositing Amount in a non-IRA, is consistent with her assertion that her failure to accomplish a timely rollover was due to an error committed by Financial Institution.

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 from the Plan. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 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 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.

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