



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201404017

OCT 31 2013

SE:T:EP:RA:T2

Uniform Issue List: 402.00-00

Legend:

Executrix	=	***
Taxpayer / Decedent	=	***
Financial Institution	=	***
Amount A	=	***
Amount B	=	***
Amount C	=	***
State	=	***
Plan X	=	***

Dear ***

This is in response to your request dated September 10, 2012, as supplemented by correspondence dated November 23, 2012, May 17, 2013, and May 28, 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") on behalf of Taxpayer (hereafter referred to as Decedent).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Executrix, Decedent's daughter, represents that she was acting under a power of attorney for Decedent up until his death, and that she is now the executrix of Decedent's estate. Executrix represents that Decedent received a distribution from Plan X totaling Amount A. Executrix asserts that Decedent's failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to Decedent's death. Executrix further represents that Amount A has not been used for any other purpose other than Decedent's final expenses.

Decedent was a participant in Plan X, which is a qualified plan under section 401(a) of the Code. On April 21, 2011, after being hospitalized, Decedent authorized Executrix under a power of attorney to handle his financial matters. In May 2011, under this power of attorney, Executrix requested a lump sum distribution of Decedent's interest in Plan X with the intent to roll the distribution over into an IRA for the benefit of Decedent, with Financial Institution as the custodian. On June 6, 2011, Plan X sent to Decedent a check for Amount A payable to Financial Institution for Decedent's benefit. On behalf of Decedent, Executrix signed paperwork for Financial Institution to open an IRA for Decedent's benefit. Decedent's five children were designated as equal beneficiaries of the IRA. Financial Institution requested clarification regarding Executrix's power of attorney before setting up the IRA; however, Decedent's health had deteriorated to the point that he could not sign any documents clarifying the matter. Before this issue could be resolved, Decedent died on June 11, 2011. The distribution check went undeposited and the IRA account was not created.

Since the power of attorney issue was not resolved before Decedent's death, the original check from Plan X, which was payable to Financial Institution for Decedent's benefit, could not be deposited into an IRA after Decedent's death. Therefore, on September 3, 2011, Plan X reissued a check to the estate of Decedent for Amount B (which was equal to Amount A less withholding of Amount C). The check was deposited into a non-IRA estate checking account and a portion of it has been used to pay final expenses for the Decedent.

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)(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 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.

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 Executrix is consistent with her assertion that the failure to accomplish a timely rollover was caused by Decedent's death.

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. Executrix is granted a period of 60 days from the issuance of this ruling letter to contribute up to Amount A into a rollover IRA in the name of Decedent. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, the amount transferred to the rollover account (up to 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).

We note that the rollover IRA into which an amount (not to exceed Amount A) may be rolled over will not have a "designated beneficiary" as that term is defined in section 401(a)(9) of the Code. The section 401(a)(9) distribution period with respect to the rollover IRA will be that applicable to an IRA owner who dies prior to attaining his required beginning date without having designated a beneficiary thereof. Accordingly, the entirety of Decedent's interest in Plan X that is rolled over into the rollover IRA must be distributed to the beneficiaries of the rollover IRA no later than the end of the calendar year containing the fifth anniversary of Decedent's death.

Finally, the scope of Executrix's authority both under the executed power of attorney while Decedent was alive and as an executrix of Decedent's estate after Decedent's

death are matters governed by state law. This ruling assumes Executrix's actions relevant to the ruling request contained herein are in accordance with the laws of State and taken pursuant to Executrix's authority as Decedent's power of attorney while Decedent was alive and as executrix of Decedent's estate after Decedent's death.

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: * * *
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