



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201406022

NOV 14 2013

Uniform Issue List: 402.03-00

SE: T: EP: RA: T1

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Legend

Taxpayer A	=	XXXXXXXXXXXXXXXXXX
Plan B	=	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX
Plan C	=	XXXXXXXXXXXXXXXXXX
Company D	=	XXXXXXXXXXXXXXXXXX
Financial Institution E	=	XXXXXXXXXXXXXXXXXX
Amount 1	=	XXXXXXXXXXXXXXXXXX
Amount 2	=	XXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXX:

This is in response to your request dated July 16, 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 penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution equal to Amount 1 from Plan B, which was maintained by Company D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by 402(c)(3) was due to the fact that his request for a direct rollover was not completed and the initial distribution check was not received. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A participated in Plan B with Company D. In August 2012, due to the bankruptcy of Company D in December 2010, Taxpayer A requested a rollover of Amount 1 from Plan B to Plan C. The request for a rollover was not completed because Financial Institution E could not reach any of Company D's contacts. As a result of this, a distribution check was mailed to Taxpayer A from Financial Institution E in December 2012, totaling Amount 1 less income tax withholding of Amount 2. Taxpayer A represents he never received the distribution check and the check was never cashed. Taxpayer A had no knowledge of the check even being mailed to him until he received a 1099R for Tax Year 2012 from Financial Institution E. Taxpayer A contacted Financial Institution E and requested a new distribution check and a corrected 1099R. Financial Institution E refused to issue a corrected 1099R but did issue a new distribution check to Taxpayer A dated March 29, 2013. The check remains uncashed.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B.

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.

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).

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1, of the Income Tax Regulations (Regulations) Q&A-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 408(d)(3)(I) 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 and documentation submitted by Taxpayer A is consistent with his assertion that the failure to accomplish a timely rollover of Amount 1 was due to the bankruptcy of Company D and resulting incomplete rollover attempt of the distribution of Amount 1 from IRA B compounded by the mishandling of the distribution check mailed to Taxpayer A. Therefore, pursuant to section 402(c)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 to a qualified retirement account. 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 1 will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

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

201406022

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXX
(ID XXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to
SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted copy of this letter