



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201410039

DEC 12 2013

Uniform Issue List: 402.00-00

LEGEND:

Taxpayer A =

Plan B =

Company C =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Amount 7 =

Amount 8 =

Dear :

This responds to your request dated July 26, 2013, as supplemented by correspondence dated September 10, 2013, and October 9, 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 she received a distribution from Plan B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to an error by Company C in failing to inform Taxpayer A of her ability to roll over Amount 1 to an Individual Retirement Account (IRA) as required by section 402(f) of the Code.

Taxpayer A represents that she is a retired participant in Plan B, which is sponsored by her former employer, Company C. Taxpayer A represents that after her retirement from Company C in 1994, she kept her Plan B account balance in Plan B. Taxpayer A received a notice (Notice 1) from Company C dated January 4, 2011, indicating that as a separated participant in Plan B, Taxpayer A would receive distributions of her account balance because she had reached age 70-1/2. Notice 1 indicated that Taxpayer A would receive two distributions from Plan B: one payment of a required minimum distribution that would be made in December 2011, and a second payment of her entire remaining account balance that would be made by April 1, 2012.

In December 2011, Taxpayer A received a 2<sup>nd</sup> notice (Notice 2) from Company C dated December 14, 2011, indicating that she would receive a 2011 required minimum distribution in Amount 2 within two days of the notice. Taxpayer A represents that after receiving Notice 2, and at several points thereafter, she called Company C's benefits center (Benefits Center) to express that she did not want her account balance distributed and to request that Company C maintain her account balance in Plan B. Taxpayer A represents that an employee of the Benefits Center indicated that Taxpayer A could request to have her account balance remain in Plan B and that he would send her a form to use to make the request. Taxpayer A represents that she never received this form as promised.

Taxpayer A represents that she next received a 3<sup>rd</sup> notice (Notice 3) from Plan B on January 4, 2012. Notice 3 indicated that Taxpayer A would receive a 2012 required minimum distribution in Amount 3. Upon receiving Notice 3, Taxpayer A wrote a letter to Company C, dated January 4, 2012, requesting that Company C maintain her account balance and indicating that she did not need or want her account balance. Taxpayer A represents that Company C did not respond.

Although Notice 3 indicated that Taxpayer A would receive a required minimum

distribution for 2012, Company C then sent Taxpayer A a 4<sup>th</sup> notice (Notice 4), on January 6, 2012, indicating that Taxpayer A's entire account balance would be distributed to her within 60 days of the date of Notice 4.

Taxpayer A represents that the Plan distributed Amount 2 and Amount 3. Her remaining account balance of Amount 1 was distributed from Plan B on March 29, 2012. Plan B withheld a total of Amount 4 for federal and state withholding taxes, resulting in a net distribution of Amount 5. Taxpayer A represents she used a portion of Amount 5 for some personal expenses (Amount 6), but Amount 7 (Amount 6 - Amount 5) has not been used for any other purpose.

Taxpayer A represents that Company C failed to provide her with instructions for a tax-free rollover to an IRA, or any explanation of the tax consequences of receiving a lump sum distribution. Taxpayer A represents that once she received her distribution on March 29, 2012, she contacted the Benefits Center for advice on how to roll the account balance back into Plan B, but was told by a Benefits Center representative that she was responsible for her account balance.

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 a total of Amount 8 (a portion of Amount 1, plus the amount that was withheld for taxes).

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).

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) of the Code.

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.

Section 402(f) of the Code provides for a written explanation to recipients of distributions eligible for rollover treatment. Section 402(f)(1) provides, in pertinent part, that the plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

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 due to the error of Company C in failing to inform Taxpayer A of her ability to roll over Amount 1 to an IRA as required by section 402(f) of the Code.

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 1 from Plan B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute an amount up to Amount 8 to an IRA. Provided all other requirements of section 402(c), except the 60-day requirement, are met with respect to the contribution, the contributed amount will be considered a rollover contribution within the meaning of section 402(c).

Please note that 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 that may be applicable hereto.

This letter ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to her authorized representative in accordance with a Power of Attorney (Form 2848) on file with this office.

If you have any questions, please contact \_\_\_\_\_ (I.D. # \_\_\_\_\_) by  
phone at \_\_\_\_\_ or fax at \_\_\_\_\_ . Please address all  
correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

cc: