



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

FEB 06 2014

201418063

SE: T: EP: RA: T1

Uniform Issue List: 402.08-00

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX  
Plan B = XXXXXXXXXXXXXXXXXXXX  
Financial Institution C = XXXXXXXXXXXXXXXXXXXX  
Account D = XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
Amount 1 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This is in response to your request for a letter ruling received in this office on July 7, 2013, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) 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 of Amount 1 within the 60-day period prescribed by section 402(c)(3) was due to the assumption that the account the distribution was deposited into was an IRA account.

In January 2013, Taxpayer A requested a distribution from Plan B with the intention of completing a rollover into her existing IRA account with Financial Institution C. On February 8, 2013, Taxpayer A received a check payable to Financial Institution C FBO Taxpayer A. Taxpayer A immediately forwarded the check to Financial Institution C with instructions to deposit the check into Account D. Taxpayer A maintained several accounts with Financial Institution C both IRA and non-IRA accounts. Account D had

been mislabeled online as an IRA account by Taxpayer A's spouse several years earlier and never corrected. Taxpayer A was aware of this misidentification. When Taxpayer A looked up her IRA account number online, she mistakenly selected the account number for the mislabeled IRA instead of her existing IRA. Taxpayer A and her spouse currently work in different states which, Taxpayer A argued, contributed to the confusion. The mistake was not discovered until after the expiration of the 60-day period and Financial Institution C refused to correct the mistake.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(B) of the Code with respect to the distribution of Amount 1.

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) of the Code 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 section 402(c) of the Code 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) 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.

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 sections 408(d)(3)(I) and 402(c)(3)(B) 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

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time elapsed since the distribution occurred.

The Service has the authority to waive the 60-day rollover requirement for a distribution from a qualified retirement plan where the individual failed to complete a rollover to another qualified plan or IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated above in Revenue Procedure 2003-16. In this instance, however, the Service finds that the documentation and materials provided by Taxpayer A do not demonstrate how any of these factors resulted in her failure to accomplish a timely rollover of Amount 1. Taxpayer A represented that her inability to complete a rollover of Amount 1 was caused by her spouse's misidentification, several years earlier, of Account D as an IRA and Taxpayer A's failure to properly determine that the account she designated to receive the rollover was an IRA. In addition, Taxpayer A had the opportunity to discover her mistake and correct the error within the 60-day period.

Therefore, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B.

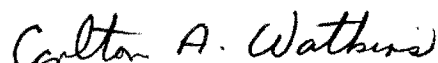
Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B.

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 ruling 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 XXXXXXXXXXXX (Identification No. XXXXXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose