



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

201430023

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 30 2014

Uniform Issue List: 402.00-00

SE:T:EP:RA:T3

Legend:

| | | |
|-------------------------|---|-----|
| Taxpayer A | = | *** |
| Decedent D | = | *** |
| 403(b) Annuity B | = | *** |
| Amount A | = | *** |
| Company C | = | *** |
| Financial Institution F | = | *** |
| Advisor I | = | *** |

Dear

This is in response to your request dated August 26, 2013, as supplemented by correspondence dated February 21, 2014, 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 403(b) Annuity B totaling Amount A. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to emotional distress and hardship which impaired her ability to make financial decisions during the 60-day period. Also, Taxpayer A asserts that she failed to complete a timely rollover due, in part, to errors on the part of her investment adviser.

Decedent D died on June 20, 2012 following a long period of illnesses and hospitalizations during which Taxpayer A was his primary caregiver. Taxpayer A, Decedent D's surviving spouse, was the designated beneficiary of Decedent's 403(b) Annuity B, a Code 403(b) annuity contract held by Company C.

In August, 2012, Taxpayer A had two close friends complete an annuity distribution application form from Company C on her behalf. Due to a misunderstanding, Taxpayer A's friends erroneously completed the form to elect a lump sum distribution. Due to the emotional distress and problems she faced following Decedent D's death, Taxpayer A signed the application on August 13, 2012 without noticing the error.

After receiving the lump sum distribution of Amount A, and within the 60-day rollover period, Taxpayer A contacted Advisor I, her long time investment adviser at Financial Institution F, about Amount A. Taxpayer A had no knowledge or experience in financial matters, and she and her late husband had relied on Advisor I's advice for many years. Taxpayer A understood that Advisor I was going to arrange to rollover Amount A into a traditional IRA. Individual I told Taxpayer A that the documents to finalize the rollover were in the mail and that she should sign, date, and return them as soon as possible.

After a few weeks, Taxpayer A notified Advisor I that she had not received the documents. Advisor I admitted that the documents had been mailed to the wrong address and promised to re-send them. Advisor I's second attempt to mail the documents was also unsuccessful and Taxpayer A never received the documents. Taxpayer A later attempted to follow up with the matter and was informed that Advisor I had abruptly left Financial Institution F.

Neither Advisor I nor anyone in his office informed Taxpayer A that the rollover had to be completed within 60 days. Taxpayer A further represents that, except for a *de minimis* amount, Amount A has not been used for any other purpose.

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 403(b)(8)(A) of the Code provides that if any portion of the balance to the credit of an employee in a section 403(b) annuity contract is paid to the employee in an eligible rollover distribution, and the employee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B), 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 403(b)(8)(B) of the Code provides that the rules of section 402(c)(2) though (7), (9) and (11) shall apply for the purposes of section 403(b)(8)(A).

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)(9) of the Code provides that if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of 402(c) shall apply to such distribution in the same manner as if the spouse were the employee.

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.

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 caused by the distress and hardships she faced following Decedent D's death compounded by the errors made by her investment advisor.

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

403(b) Annuity B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other applicable requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling assumes 403(b) Annuity B satisfies the qualification requirements of Section 403(b) of the Code at all times relevant to this transaction.

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.

If you wish to inquire about this ruling, please contact *** (ID# ***) at (***) ***-***. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose

CC: ***

