



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

201446032

AUG 19 2014

SE: T: EP: RA: T1

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 402.08-00

Legend:

Taxpayer A =

Employer B =

Plan X =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Dear :

This is in response to your request dated April 10, 2014, as supplemented by correspondence dated June 9, 2014, from your authorized representative, 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 penalties of perjury in support of the ruling requested.

Taxpayer A represents that she received a distribution from Plan X totaling Amount 1. Taxpayer A represents that she timely rolled over Amount 2 from the distribution, but could have rolled over Amount 3 in addition to Amount 2. Taxpayer A asserts that her failure to accomplish a rollover of Amount 3 within the 60-day period prescribed by section 402(c)(3) of the Code, was due to Plan X's failure to provide the required rollover notice under section 402(f) ("402(f) notice"). Taxpayer A asserts that since she did not have the 402(f) notice information, she miscalculated the taxable portion of Amount 1 and therefore failed to roll over Amount 3. Taxpayer A further represents that Amount 3 has not been used for other purposes.

Taxpayer A represents that she retired from employment with Employer B at the end of February 2013, with a monthly annuity under Plan X. Taxpayer A elected the option to be paid a one-third lump sum distribution of her Plan X retirement benefit, and on July 17, 2013, received Amount 1 as the one-third lump sum. Taxpayer A submitted, as part of her ruling request, a Plan X publication that describes the plan and its retirement benefit provisions. The publication states that Plan X is a qualified plan under section 401(a) of the Code. Taxpayer A represents that she did not receive a written notice to recipients of distributions eligible for rollover treatment, as required under section 402(f) of the Code.

Taxpayer A represents that her Plan X benefit included both her own and Employer B's contributions and thus included some after-tax contributions. Taxpayer A intended to make a rollover contribution of the taxable portion of Amount 1. Taxpayer A received a letter dated July 16, 2013, from Plan X informing her that her own contributions to Plan X amounted to Amount 4. Taxpayer A subtracted Amount 4 from Amount 1 to determine what she thought was the taxable portion of the distribution. She represents that she rolled over a total of Amount 2 to two separate Individual Retirement Accounts ("IRAs") within the 60-day rollover period.

On February 3, 2014, Taxpayer A received a "2013 Statement of Taxable Earnings" listing Amount 5 (the sum of Amount 2 and Amount 3) as the taxable portion of her distribution. Taxpayer A contacted Plan X and learned that her calculation of the taxable portion of the distribution had been in error and that she had not rolled over all of the taxable portion of the Amount 1 as she had intended.

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

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 IRA constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, but shall not include: any distribution which is one of a series of substantially equal payments (not less frequently than annually) based on the life or life expectancy of the employee or the joint lives or life expectancies of the employee and beneficiary, or for a specified period of 10 years or more; a distribution required under section 401(a)(9) of the Code; or a hardship distribution.

Section 402(c)(2) of the Code provides that, in the case of any eligible rollover distribution, the amount transferred may include the portion of such a distribution which is not includible in gross income (determined without regard to a rollover under section 402(c)(1)) to the extent:

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) of the Code and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B), which includes an IRA. In the case of a transfer described in section 402(c)(2)(A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to section 402(c)(1)).

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

Section 1.401(a)(31)-1, Q&A-15 of the Income Tax Regulations ("Regulations") 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.

Section 1.402(f)-1, Q&A-1 of the Regulations provides, in part, that the section 402(f) notice must explain the rules under which the distributee may elect that the distribution be paid in the form of a direct rollover to an eligible retirement plan; the rules that require the withholding of tax on the distribution if it is not paid in a direct rollover; the rules under which the distributee may defer tax on the distribution if it is contributed in a rollover to an eligible retirement plan within 60 days of the distribution; and if applicable, certain special rules regarding the taxation of the distribution as described in section 402(d) (averaging with respect to lump sum distributions) and (e) (other rules including treatment of net unrealized appreciation).

Notice 2009-68, 2009-39 I.R.B. 423 (September 5, 2009) provided a safe harbor 402(f) notice which, in part, would notify employees about allocating after-tax contributions in the event of a partial distribution.

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).

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 are consistent with her assertion that her failure to accomplish a timely rollover was caused by Plan X's failure to provide notice as required by section 402(f) of the Code. Taxpayer A represents that she intended to roll over only a portion of the eligible rollover distribution to an IRA as allowed under section 402(c)(4) of the Code, and that the amount intended to be rolled over was the taxable portion of the distribution. Under section 402(c)(2), such a partial rollover is treated as consisting first of the portion of such distribution that is includible in gross income. Taxpayer A asserts that the taxable amount was Amount 5 (the sum of Amount 2 and Amount 3), but she did not roll over Amount 3 because Plan X did not issue her a 402(f) notice alerting her to the method for determining the taxable portion of Amount 1 during the 60-day rollover period. As a

result, she miscalculated the taxable portion and failed to roll over the full taxable amount as she intended.

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 3 from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 into an IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount 3 will be considered a 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 in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

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 a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact (ID  
) at ( ) - . 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:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: