



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201446038

AUG 18 2014

Uniform Issue List: 402.08-00

SET: EP: RA: T1

Legend:

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

Dear :

This letter is in response to a request for a letter ruling dated May 6, 2014, as supplemented by correspondence dated June 7, 17 and July 8, 2014, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 2 from Plan B.

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 of Amount 1 from Plan C. Taxpayer A also represents that Amount 2 was erroneously withheld from this distribution. Taxpayer A asserts that his failure to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 402(c)(3) was due to an error by Financial Institution D. Taxpayer A further represents that Amount 2 has not been used for any purpose.

Taxpayer A owns and operates Company B. Company B maintained Plan C, a qualified retirement plan with Financial Institution D. On February 10, 2010, Plan C was discontinued by its trustee, Financial Institution D. Taxpayer A intended to complete a direct transfer of his account balance in Plan C to Roth IRA E and instructed the trustee to do this. However, instead of completing a direct rollover, Financial Institution D withheld state and federal taxes of Amount 2 on the distribution. In 2011, Financial Institution D issued a Form 1099-R using Code G in box 7 indicating a direct rollover but with Amount 2 withheld. A letter from Financial Institution D, submitted with the ruling request, confirms that Taxpayer A requested a direct rollover. The mistake was not discovered until Taxpayer A received the erroneous Form 1099-R in 2011, after the 60-day waiver period.

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)(A) of the Code with respect to the distribution of Amount 2.

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)(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) 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.

Revenue Procedure 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 time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 2 was due to a failure by Financial Institution D to follow his instructions regarding the direct rollover of Amount 1 to Roth IRA E which resulted in Amount 2 being withheld.

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 2 from Plan C and Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 2 into a rollover 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, Amount 2 will be considered rollover contributions 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.

If you wish to inquire about this ruling, please contact (I.D. # ),  
, at ( )

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

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