



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

201448033

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

SEP 04 2014

Uniform Issue List: 402.08-00

SE:T: EP:RA:T3

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Legend:

Taxpayer A	=	***
Financial Institution B	=	***
Amount C	=	***
Amount D	=	***
Plan X	=	*** ***
IRA Y	=	*** ***

Dear \*\*\*:

This is in response to your request dated June 23, 2014, in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (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 X totaling Amount C, in the form of a direct rollover, from which Amount D was improperly withheld for federal income tax. Taxpayer A asserts that her failure to accomplish a rollover of Amount D within the 60-day period prescribed by section 402(c)(3) was due to an error committed by Financial Institution B that was not discovered until after the 60-day period had expired.

On December 27, 2012, Taxpayer A submitted a distribution request to Financial Institution B, directing them to distribute, in a direct rollover, her entire balance under Plan X to an Individual Retirement Account (IRA), IRA Y. Financial Institution B's

distribution form completed by Taxpayer A provides that the "following distributions are not subject to the mandatory 20% federal tax withholding: Direct rollover to an eligible retirement plan." Taxpayer A elected a direct rollover to IRA Y in section 5.F. of Financial Institution B's form.

Financial Institution B did not distribute Taxpayer A's account under Plan X correctly. On January 14, 2013, Financial Institution B transferred 80% of Taxpayer A's account balance under Plan X to IRA Y as a direct rollover, instead of transferring 100% of Taxpayer A's Plan X account balance to IRA Y as Taxpayer A had requested. The remaining 20% of Taxpayer A's account balance in Plan X, Amount D, was remitted as federal income tax withholding. The distribution paperwork completed by Taxpayer A and submitted to Financial Institution B stated that the retirement plan funds held in Plan X should have been transferred to IRA Y via a direct rollover and no federal income tax should have been withheld. Financial Institution B has acknowledged that it should have transferred 100% of Taxpayer A's balance in Plan X to IRA Y, and that remitting 20% of the balance as federal income tax withholding was its mistake.

Taxpayer A was unaware of Financial Institution B's error until January of 2014, when Financial Institution B issued Form 1099-Rs to the taxpayer with respect to the Plan X distribution made in 2013. The 1099-Rs revealed that Financial Institution B improperly remitted Amount D as federal income tax withholding from the January 14, 2013, Plan X distribution. However, by January of 2014, the 60-day rollover period to contribute these amounts to the taxpayer's IRA had expired.

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

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 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) provides the rules governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1, Q&A-15, of the Federal 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.

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 of Amount D was due to an error committed by Financial Institution B that was not discovered until after the 60-day period had expired.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount D from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D 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 D into an IRA 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 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.

**201448033**

If you wish to inquire about this ruling, please contact \*\*\*

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. 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:

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