



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201452027

SEP 30 2014

Uniform Issue List: 402.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Individual B =

Financial Institution C =

Plan D =

IRA E =

IRA F =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear:

This letter is in response to your request dated May 9, 2014, and supplemented by correspondence dated August 5, August 6, 2014 and September 2, 2014, from your authorized representative, in which you request a waiver of the 60-day rollover requirement under 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 a distribution equal to Amount 1 was made from Plan D in 2012. Taxpayer A further represents that he intended that Amount 1 be transferred to an individual retirement arrangement ("IRA") in his name. Taxpayer A asserts that his failure to accomplish a rollover to an IRA described under section 408(a) of the Code, within the 60-day period prescribed by section 402(c)(3), was due to improper instruction given by Financial Institution C in opening an IRA online at Financial Institution C and the failure of Financial Institution C to alert Taxpayer A to the fact that Amount 1 was transferred to an IRA that was not titled in the name of Taxpayer A.

Taxpayer A was the owner of a company that sponsored Plan D. He participated in Plan D until his company was dissolved in 2012. Taxpayer A intended to roll over his account in Plan D, which was held by Financial Institution C, to an IRA with Financial Institution C.

Individual B, Taxpayer A's spouse, was the Trustee of Plan D and handled matters related to Plan D. Individual B's name, as Trustee, was on the account of Plan D held by Financial Institution C. On July 8, 2012, Individual B logged into the Financial Institution C website to facilitate transferring Taxpayer A's account in Plan D to an IRA in his name. Individual B had a "live chat" with a representative of Financial Institution C on how to open an IRA in Taxpayer A's name. Individual B completed the online application and sent a follow up letter to Financial Institution C requesting the transfer based on the "live chat" with the representative of Financial Institution C. The letter was signed by Taxpayer A and Individual B.

In her capacity as Trustee of Plan D, Individual B intended to open an IRA in Taxpayer A's name but instead IRA E was opened in her name by mistake. After receiving the account statements, Individual B reasoned that her name was listed on IRA E because she had been listed on the Plan D account for many years as Trustee. Individual B also thought that the fact that her name was on IRA E meant she had the same trading authority as she had as Trustee over Plan D.

During July, August and September of 2012, Amounts 2, 3 and 4 (totaling Amount 1) were transferred from Plan D, via trustee-to-trustee transfer, to IRA E.

Individual B first discovered the mistake in 2014 when she received a letter from Financial Institution C regarding taking the required minimum distribution from IRA E. The letter listed Individual B's age rather than Taxpayer A's age. Individual B checked with Financial Institution C and the date of birth used to calculate the 2013 required minimum distribution from IRA E was her date of birth and not Taxpayer A's. No monies have been withdrawn from IRA E except the required minimum distributions based on Individual B's date of birth. Financial Institution C has indicated they will recalculate the required minimum distribution amount using Taxpayer A's date of birth.

Following the discovery of the mistake and after speaking with Financial Institution C, Individual B opened IRA F with Financial Institution C in Taxpayer A's name.

Individual B had taken all the appropriate steps, including seeking advice from Financial Institution C which had held the Plan D account for years, to ensure she was transferring Taxpayer A's Plan D account to an IRA in Taxpayer A's name. The failure to transfer the Plan D account into a correctly titled IRA was due to improper instruction given to Individual B during the "live chat" with a representative of Financial Institution C on how to open an IRA in Taxpayer A's name.

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)(B) of the Code with respect to the distribution of Amount 1 from Plan D.

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Section 402(c)(1) 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 time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A are consistent with his assertion that the failure to accomplish a timely rollover was due to improper instruction given by Financial Institution C and the failure of Financial Institution C to alert Taxpayer A to the fact that Amount 1 was transferred to an IRA that was not titled in the name of Taxpayer A.

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 1 from Plan D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute an amount not more than Amount 1 into IRA F. 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 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 408(a)(6) 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.

A copy of this letter ruling has been sent to your authorized representatives pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (ID) at () . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: