



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

OCT 16 2014

Uniform Issue List: 402.03-00

SET:EP:RA:T1

Legend:

Taxpayer A =

Plan B =

Employer C =

Amount 1 =

Dear :

This is in response to your request dated February 24, 2014, as supplemented by correspondence dated May 10, 2014 and September 2, 2014, in which you request 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 penalties of perjury in support of the ruling requested:

Taxpayer A represents that he received a distribution of Amount 1 from Plan B. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to significant family and work related issues which impaired his ability to complete the rollover within 60-days.

Taxpayer A participated in Plan B with Financial Institution C. Taxpayer A represents that he retired from Employer C on June 1, 2012, and began receiving a monthly annuity benefit. In addition to the monthly benefit, Taxpayer A was scheduled to receive an additional benefit that could be applied to his annuity, rolled over to another retirement plan or received in a lump-sum payment. In October, 2012, Plan B provided

Taxpayer A written communication concerning this benefit that fully explained Taxpayer A's options. Taxpayer A represents that because of a medical issue at the time, he missed a scheduled appointment with a counselor of Plan B that would more fully explain his options concerning this additional benefit. Taxpayer A never rescheduled the appointment. As a result of not electing any of the options presented to Taxpayer A, Plan B issued a lump-sum payment of Amount 1 on December 6, 2012. In March, 2013, Taxpayer A was advised by his tax preparer that he had missed the 60-day rollover period. Taxpayer A tried to return the check to Plan B but was told that since federal withholding was deducted that the distribution could not be reversed.

Taxpayer A indicated that during the 60-day rollover period he had no specific health issues that prevented a rollover but represents he was caring for his spouse and provided support for a grandchild with ongoing medical issues. However, these issues were present prior to the distribution and did not significantly increase during the 60-day period.

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 1.

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 (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 sections 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 for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 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.

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 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 Service has the authority to waive the 60-day rollover requirement for a distribution from a qualified retirement plan where the individual failed to complete a rollover to another qualified plan or IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated above in Revenue Procedure 2003-16. In this instance, however, the Service finds that the documentation and materials provided by Taxpayer A do not demonstrate how any of these factors resulted in his failure to accomplish a timely rollover of Amount 1. Taxpayer A represented that his inability to complete a rollover of Amount 1 was caused by his missing a scheduled appointment with Plan B's counselor and significant family issues during the 60-day rollover period. However, these issues existed prior to the distribution and did not appreciably increase during the 60-day period.

Therefore, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B.

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 is being sent to your authorized representative 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: