



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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MAR 18 2015

Uniform Issue List: 402.00-00

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Legend:

Taxpayer A =
Company B =
Plan C =
Financial Institution D =
Company E =
Amount 1 =
Amount 2 =
Amount 3 =

Dear :

This is in response to a request for a private letter ruling dated October 16, 2014, as supplemented by correspondences dated December 11, 2014, and January 21, and February 20, 2015, 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 penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution of Amount 1 from Plan C. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to her failure to

receive notification that Plan C was terminating and subsequent failure to receive the distribution check issued by Financial Institution D.

Taxpayer A worked for Company B and participated in Plan C, a qualified plan under section 401(a) of the Code. Plan C was maintained with Financial Institution D. In mid-2013 Company B was sold to Company E which became Taxpayer A's new employer. Coinciding with this transaction, Plan C was terminated. On August 2, 2013, Financial Institution D, the administrator of Plan C, sent notice of the plan termination. Taxpayer A represents she never received the notice nor the subsequent distribution check issued on September 6, 2013, by Financial Institution D. The check was for Amount 2, representing Taxpayer's A account balance in Plan C (Amount 1) less federal taxes withheld (Amount 3).

Taxpayer A first noticed the distribution from Plan C on January 22, 2014, when she began preparing her 2013 tax return. She went on-line to view her account balance in Plan C plan and noticed it was zero. She immediately contacted Financial Institution D who was unable to find a copy of the distribution check or the letter informing Taxpayer A of the plan termination. Between January and September, 2014, Taxpayer spoke to Financial Institution D a total of 16 times, attempting to accomplish a rollover of the distributed funds. On March 13, 2014, Financial Institution D re-issued the check for Amount 2. Taxpayer A returned it to Financial Institution D with a request that it be deposited (rolled over) to an IRA. Financial Institution D refused to do this. They held the check for 180 days then cancelled it. On September 19, 2014, Financial Institution D re-issued the check for Amount 2 which remains uncashed in the possession of Taxpayer A.

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 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 includable 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 402(f) of the Code generally provides that administrators of qualified plans are required to provide plan participants a written explanation of their right to roll over distributions to another eligible retirement plan.

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 information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was due to her failure to receive notification that Plan C was terminating and subsequent failure to receive the distribution check issued by Financial Institution D.

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. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 1 into a rollover IRA or other eligible retirement plan. Provided all other requirements of section 402(c) 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) 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.

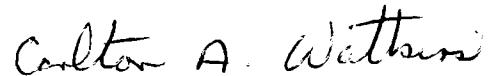
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No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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,



Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: