



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201533023

MAY 22 2015

Uniform Issue List: 402.00-00

T: EP: RA: T 2

Legend:

Taxpayer A =

401(k) Account B =

401(k) Account C =

IRA D =

IRA E =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear

This is in response to your request dated January 17, 2014, as supplemented by correspondence dated August 10, September 23 and November 5, 2014, and January 7, 2015, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) 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 she received distributions from 401(k) Account B and 401(k) Account C totaling Amount 1 and Amount 2, respectively. Taxpayer A asserts that her failure to accomplish a rollover of Amount 3 (a portion of Amount 1) and Amount 4 (a portion of Amount 2) within the 60-day period prescribed by section 402(c)(3) was due to her temporary use of the funds because of medical and financial difficulties which delayed the rollover of the funds into IRA D and IRA E.

Taxpayer A maintained 401(k) Account B and 401(k) Account C. In late 2009, Taxpayer A and her spouse were experiencing financial difficulties due to medical issues. As a result of these difficulties Taxpayer A took a distribution of Amount 1 from 401(k) Account B on December 28, 2009 and Amount 2 from 401(k) Account C on December 31, 2009. Taxpayer A used the funds to pay off a second mortgage to avoid foreclosure. In March 2010, Taxpayer A's spouse was able to obtain a cash advance from his employer. On March 9, 2010, Taxpayer A deposited Amount 3 into rollover IRA D and on March 12, 2010, deposited Amount 4 into rollover IRA E. Both of these deposits were after the 60-day period had expired.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount 3 from 401(k) Account B and Amount 4 from 401(k) Account C.

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.

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(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)(8) of the Code provides that an individual retirement account (IRA) is one type of eligible retirement plan.

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.

Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected her ability to timely roll over the distributions of Amount 3 of 401(k) Account B and Amount 4 of 401(k) Account C to an IRA. Taxpayer A has stated that the distributions were used to pay off a second mortgage and the delay in the rollover of Amount 3 and Amount 4 was caused by a delay beyond their control. In essence, Taxpayer A made a short term loan when she withdrew Amount 1 from 401(k) Account B and Amount 2 from 401(k) Account C and while she had the intent at the time of withdrawal to redeposit these amounts into an IRA prior to the expiration of the 60-day rollover period, she assumed the risk that they may not be returned timely. Therefore, pursuant to section 402(d)(3) of the Code, the Internal Revenue Service hereby declines to waive the 60-day rollover requirement with respect to the December, 2009, distributions to Taxpayer A of Amount 1 and Amount 2.

Thus, the contributions of Amount 3 into IRA D on March 12, 2010, and Amount 4 into IRA E on March 9, 2010, which Taxpayer A deposited back into IRAs after the expiration of the 60-day period, will not be considered valid rollovers because the 60-day requirement under section 402(d)(3) of the Code with respect to such contributions was not satisfied.

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.

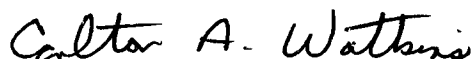
A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact

Please address all correspondence to

SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: