



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

201545034

AUG 11 2015

COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

SETTLEMENT

Legend:

Taxpayer A	=
Plan B	=
Company C	=
Amount 1	=
Amount 2	=

Dear

This is in response to your request dated May 7, 2014, as supplemented by correspondence dated September 15, 2014, and June 1, 2015, in which you request a waiver of the 60-day rollover requirement under section 402(c)(3) of the Internal Revenue 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 B totaling Amount 1. Taxpayer asserts that her failure to complete a rollover of Amount 1 within the 60-day period prescribed by section 402(c)(3) of the Code was due to her being unaware of her option to rollover Amount 1 and her need to use the funds for repairs of her home.

In April 2013, Taxpayer A was separated from her employment with Company C. On May 11, 2013, Taxpayer A received a Pension Plan Benefit Election Form from Plan B. The form explained her benefit under Plan B and provided her the option of receiving a benefit upon reaching normal retirement age or receiving a lump-sum benefit. The lump-sum benefit must have been elected within 90-days

of the May 11, 2013, letter. On May 23, 2013, Taxpayer A elected a lump sum payment minus the required 20% mandatory withholding.

Taxpayer deposited Amount 2 into her checking account. Taxpayer asserts she has not used Amount 2 for any other purpose. However, additional information submitted by Taxpayer A on June 1, 2015, indicated that she needed the funds for possible extensive repairs of her home.

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)(a) 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)(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.

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.

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 distribution of Amount 2 into an IRA. In addition, Taxpayer A initially represented that Amount 2 was not used for any other purposes, however, in her letter dated June 1, 2015, Taxpayer A indicated she withheld the distribution for possible repairs of her home.

Therefore, pursuant to section 402(d)(3) of the Code, Taxpayer A's request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 is declined and Amount 1 and any earnings thereon are therefore includible in Taxpayer A's gross income for the 2013 taxable year.

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 have any questions, please contact

Please address all correspondence to

SE:T:EP:RA:T1.

Sincerely yours,



Carlton Watkins, Manager,  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose