



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201547011

AUG 26 2015

U.I.L. 402.08-00

T. EP. RA. T3

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Legend:

Taxpayer A = xxxxxxxxxxxxxx

Taxpayer B = xxxxxxxxxxxxxx

Plan X = xxxxxxxxxxxxxx

IRA Y = xxxxxxxxxxxxxx

Company B = xxxxxxxxxxxxxx

Company C = xxxxxxxxxxxxxx

Amount D = xxxxxxxxxxxxxx

Date 1 = xxxxxxxxxxxxxx

Dear xxxxxxxxxxxx:

This letter is in response to your request dated November 18, 2014, as supplemented by correspondence dated February 5, 2015, and June 15, 2015, submitted on your behalf by your authorized representative, in which you request

a waiver of the 60 day rollover requirement contained in 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 she requested a direct rollover of Amount D from Plan X into an IRA with Company B. 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 an error by Company B. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A was a participant in Plan X. Upon her retirement, Taxpayer A executed a distribution form from Plan X and elected a trustee-to-trustee transfer of Amount D with Company B. Taxpayer A's spouse, Taxpayer B, was also retiring and had established IRA Y with Company B. All financial holdings of Taxpayer A and Taxpayer B had always been in joint accounts. Thus, when Taxpayer A completed the distribution form electing a trustee-to-trustee transfer, she mistakenly provided the account number of her spouse's IRA Y instead of an IRA established in her name to receive the trustee-to-trustee transfer.

On Date 1, Company C, the custodian Trustee of Plan X, issued a check in the amount of Amount D payable to Company B as TTEE/FBO Taxpayer A's IRA. Company B erred in depositing Taxpayer A's Plan X distribution into Taxpayer B's IRA account.

Taxpayer A represents that Company B, upon receipt of the check, called her and asked which account she wanted to deposit Amount D. Taxpayer A mistakenly gave Company B her spouse's IRA account number because she did not realize that Amount D had to be in a separate IRA account under her name.

Taxpayer A was not aware of this error until March, 2014, when she went to her accountant for preparation of her 2013 tax return.

Subsequently, Taxpayer A contacted Company B and asked Company B to correct the rollover error. Company B refused to do it as the 60-day rollover period had already expired.

Based on the foregoing facts and representations, you request that the Internal Revenue Service (Service) waive the 60-day rollover requirement contained in section 402(c) (3) of the Code with respect to Amount D.

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 included 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)(8)(B) of the Code provides that an eligible retirement plan includes (i) an eligible retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a qualified trust, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

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) of the Code.

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) 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)-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, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3), 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 documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was due to an error committed by Company B for depositing her distribution check into the wrong IRA account.

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 D from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount D into a rollover IRA. Provided all other requirements of Code section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount D 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 401(a)(9) of the Code.

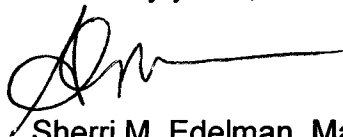
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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 with this office.

If you have any questions concerning this letter, please contact xxxxxxxxxxxx, at xxxxxxxxxxxx. All correspondence should be addressed to SE:T: EP: RA:T:2.

Sincerely yours,



Sherri M. Edelman, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

cc:

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