



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

201549032

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 11 2015

Uniform Issuer List: 402.00-00

SEIT:EP:RA:T2

Legend:

Taxpayer A	=
Amount A	=
Amount B	=
Plan X	=
Company A	=
Financial Institution A	=
Financial Institution B	=

Dear :

This is in response to your request, dated April 22, 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 on October 20, 2014, she received a distribution of Amount A from Plan X, a plan administered by Financial Institution A. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by

section 402(c)(3)(B) was due to an error by Financial Institution A. Taxpayer A further represents that during all pertinent times she had sufficient funds available to accomplish a rollover.

In August 2008, while employed at Company A, Taxpayer A received a participant loan from Plan X. Between September 2008 and ****, monthly loan payments of Amount B were made through automatic payroll deductions. In ****, Taxpayer A terminated her employment at Company A. Unable to continue the automatic payroll deductions, Taxpayer A established an automatic monthly transfer of the monthly loan payment from a joint checking account that she and her spouse maintained at Financial Institution B. Between **** and June 2014, all required loan payments were made. In July 2014 the automatic loan payments stopped. Taxpayer A represents that Financial Institution B froze payments from the checking account because of suspected fraudulent activity. Plan X was administered by Financial Institution A. Although the problem was resolved, Financial Institution B did not restart monthly transfers. Taxpayer A represents that she did not know that the monthly transfers had stopped.

By letter dated September 19, 2014, Financial Institution A notified Taxpayer A that unless an amount (equal to three payments of Amount B) was received by October 19, 2014, the loan would be in default. The letter further stated that upon default the outstanding principal balance, plus interest accrued through the date of default, would be treated as a distribution from Plan X.

By letter dated October 20, 2014, Financial Institution A notified Taxpayer A that her loan was in default because full payment had not been received. As of the default date the outstanding loan balance, Amount A, was treated as a distribution from Plan X. The letter further stated that the entire amount of the distribution was eligible for a rollover.

Financial Institution A also sent Taxpayer A one e-mail on October 21, 2014 with copies of the letters referred to above. Taxpayer A represents that she did not receive the letters or e-mail because the e-mail went to her spam folder that she does not check. Taxpayer A first learned of the default and corresponding distribution when she received Form 1099-R for Amount A in connection with the preparation of income taxes for 20 . She subsequently obtained copies of the letters from Financial Institution A's web site.

Taxpayer A represents that she had the funds to pay off the loan at the time the loan amount was offset against her Plan X account or, in the alternative, had she known the offset amount was an eligible rollover distribution, she would have deposited the amount into an IRA within 60-days of the date when the plan loan offset occurred.

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

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 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 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 section 402(c)(3)(A) 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.

Treas. Reg. Section 1.402(c)-2, Q&A-9(a), provides that a distribution of a plan loan offset amount as defined in paragraph (b) of this Q&A-9 is an eligible rollover distribution if it satisfies the provisions of Q&A-3 (definition of eligible rollover distribution). Thus, an amount equal to the plan loan offset amount can be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the 60-day period under section 402(c)(3)(A) of the code, unless the plan loan offset amount fails to be an eligible rollover distribution for another reason.

Treas. Reg. Section 1.402(c)-2, Q&A-9(b) provides that, for purposes of section 402(c) of the Code, a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing a plan loan, the participant's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in a participant's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, e.g., where the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default upon an employee's termination of employment or within a specified period thereafter. A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

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) 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.

Although Taxpayer A represents that she did not receive any communications from Financial Institution A, she did provide copies of the letters from Financial Institution A notifying her of the pending default, as well as the distribution upon default. Further, one letter stated that the distribution was eligible for rollover. Also, monthly statements were received from Financial Institution B, both before the default and also within the 60-day rollover period. Had she read these statements she would have realized that the automatic loan payments were not made. The information presented and documentation submitted by Taxpayer A do not support the assertion of an error by Financial Institution A. Further, the documentation submitted does not demonstrate that Taxpayer A failed to accomplish a rollover due to any of the factors cited in Rev. Proc. 2003-16.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount A.

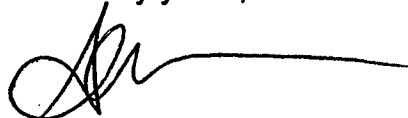
No opinion is expressed as to the treatment of the transaction described herein under the provisions of any other section of the Code or regulation which may be applicable thereto.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ***** . Please address all correspondence to E:T:EP:RA:T2.

Sincerely yours,



Sherri M. Edelman, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: