



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201608021

NOV 24 2015

Uniform Issue List: 402.00-00

Legend:

Taxpayer A	=
Plan B	=
Financial Institution C	=
Employer D	=
Amount 1	=
Amount 2	=

Dear

This is in response to your request dated July 1, 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 B. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by Code section 402(c)(3) was due to the failure of Financial Institution C to inform Taxpayer A of her ability to roll over Amount 1 to an Individual Retirement Account (IRA) as required by section 402(f) of the Code.

Taxpayer A participated in Plan B administered by Financial Institution C. On April 14, 2015, Financial Institution C issued a check in Amount 2 to Taxpayer A due to her termination of employment with Employer D. Amount 2 was Amount 1 less taxes withheld. Taxpayer A represents she was surprised to receive the check and

immediately contacted Financial Institution C. Taxpayer A was informed that she was mailed a letter of instruction in October, 2014. Taxpayer A represents she never received the notice as she had moved 2 times during the fall of 2014. After multiple telephone conversations with representatives of Financial Institution C, on April 29, 2015, Financial Institution C faxed an undated copy of the October 2014 letter to Taxpayer A. The letter did not contain the required information under section 402(f) of the Internal Revenue Code. In June 2015, after the 60-day period had expired, Taxpayer A spoke to a financial advisor who informed her of the 60-day rollover period. Amount 1 has remained in Taxpayer A's checking account.

Based on the facts and representations, you requested a ruling that the Service waive the 60 day rollover requirement contained in section 402(c)(3) 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.

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.

Section 402(f) of the Code requires the plan administrator of a plan qualified under section 401(a) to provide the written explanation described in section 402(f)(1) to any recipient of an eligible rollover distribution, as defined in section 402(c)(4). In addition, sections 403(a)(4)(B) and 457(e)(16)(B) require the plan administrator of a section 403(a) plan, or an eligible section 457(b) plan maintained by a governmental employer described in section 457(e)(1)(A), to provide the written explanation to any recipient of an eligible rollover distribution. Further, section 403(b)(8)(B) requires a payor under a

201608021

section 403(b) plan to provide the written explanation to the recipient of an eligible rollover distribution.

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 documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was due to the failure of Financial Institution C to inform her of her ability to roll over Amount 1 to an Individual Retirement Account (IRA) as required by section 402(f) of the Code

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 ruling letter to contribute an amount not to exceed Amount 1 into a rollover IRA. 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 sections 402(c).

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

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