



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201618014

FEB 3 2016

SE: T: EP: RA: T3

U.I.L 402.08-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXX

Plan X = XXXXXXXXXXXXXXXX

Financial Institution B = XXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXX

Amount E = XXXXXXXXXXXXXXXX

Amount F = XXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXX

Credit Union C = XXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXX

Dear :

This letter is in response to your request dated May 3, 2015, as supplemented by correspondence dated October 27 and October 29, 2015, and November 22, 2015, 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.

On Date 1, Taxpayer A received a distribution of Amount D from Plan X. Amount F was withheld for federal income taxes. Taxpayer A asserts that his failure to accomplish a rollover of Amount F within the 60-day period prescribed by section 402(c)(3) of the Code was due to the delay of international mail delivery.

Financial Institution B was the custodian for Plan X. Financial Institution B closed Taxpayer A's account in Plan X and on Date 1 he received a check for Amount E. On Date 2 (less than 60 days after Date 1), Taxpayer A rolled over Amount E into IRA Y with Credit Union C.

Taxpayer A represents that once he became aware that IRA Y was established and Amount E had been rolled over into IRA Y, he made an online request with Credit Union C to withdraw Amount F from his checking account and deposit Amount F into IRA Y. On Date 3, after the 60-day rollover period, Amount F was deposited into IRA Y.

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) 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. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

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) 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.

Based on the information presented and documentation submitted by Taxpayer A, no waiver of the 60-day rollover requirement is necessary with respect to Amount E, because the rollover of that amount was accomplished timely.

However, such information and documentation does not support the assertion that Taxpayer A's failure to accomplish a timely rollover of Amount F was due to delay of international mail delivery. Rather, in this case, after the 60-day rollover period, Taxpayer A made an online request to transfer Amount F from his personal checking account to IRA Y. 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 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount F from IRA Y.

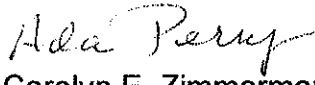
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the 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 concerning this letter, please contact xxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxx, at xxxxxxxxxxxxxx. All correspondence should be addressed
to SE:T:EP:RA:T3.

Sincerely yours,

for 

Carolyn E. Zimmerman, Acting Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose