



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201622040

MAR 3 2016

SE:T:EP:RA:T3

U.I.L 402.08-00

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Legend:

- Taxpayer A = XXXXXXXXXXXX
- Plan X = XXXXXXXXXXXX
- IRA Y = XXXXXXXXXXXX
- Financial Institution B = XXXXXXXXXXXX
- Company C = XXXXXXXXXXXX
- Amount D = XXXXXXXXXXXX
- Amount E = XXXXXXXXXXXX
- Amount F = XXXXXXXXXXXX
- Individual M = XXXXXXXXXXXX
- Individual N = XXXXXXXXXXXX

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Bank N = xxxxxxxxxxxx
 Date 1 = xxxxxxxxxxxx
 Date 2 = xxxxxxxxxxxx
 Date 3 = xxxxxxxxxxxx
 Date 4 = xxxxxxxxxxxx
 Date 5 = xxxxxxxxxxxx

Dear xxxxxxxxx:

This letter is in response to your request dated July 17, 2015, as supplemented by correspondence dated October 12, 2015, October 16, 2015, and February 1, 2016, 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 he received a distribution of a check dated Date1 for Amount D from Plan X. Taxpayer A represents that his failure to rollover Amount D was due to errors committed by Financial Institution B.

Taxpayer A was employed by Company C. Company C maintained Plan X in which Taxpayer A was a participant. In January, 2013, Taxpayer A retired from Company C with the knowledge that he would receive a distribution from Plan X in 2014. Taxpayer A represents that he planned to rollover all or part of the distribution from Plan X into IRA Y.

Taxpayer A received a check dated Date 1 for Amount E issued by Financial Institution B. Taxpayer A represents that the stub attached to the check indicated Amount F was taxable. In early October 2014, Taxpayer A contacted Individual M to initiate a rollover into IRA Y. After reading the information that came with the check, which indicated a taxable amount that was separate from the amount of the check, Individual M was not sure that the distribution could be rolled over. Unsure of how to proceed, on Date 2, Taxpayer A deposited Amount E into his savings account with Bank N.

Within the 60-day rollover period, on Date 3, Taxpayer A met with a representative of Bank N and was told that Amount F was the taxable amount. With this information Taxpayer A did not believe he could rollover the check for Amount E and was expecting that Amount F would be shown on the Form 1099-R. However, after the 60-day rollover period, on Date 4, Taxpayer A received Form 1099-R which shows that Amount D is the taxable amount.

Taxpayer A contacted Individual N to verify the accuracy of the Form 1099-R. On Date 5, Taxpayer A was told that the Form 1099-R was correct. Individual N also mentioned to Taxpayer A that Financial Institution B usually provides written notice explaining the distribution rollover options. Taxpayer A represents that he did not receive the notice until Date 5, which was after the 60-day rollover period.

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 the distribution of 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 402(f) of the Code provides for a written explanation to recipients of distributions eligible for rollover treatment. Section 402(f)(1) provides, in pertinent part, that the plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

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 his assertion that his failure to accomplish a rollover within the 60-day period was due to errors committed by Financial Institution B. Taxpayer A represents that the erroneous information given on the check stub caused Taxpayer A, and his financial advisors, to believe the distribution of Amount D did not qualify for a rollover. Taxpayer A further represents that if he had received the rollover notice required under section 402(f) of the Code prior to the distribution, he would have requested a direct rollover.

Therefore, pursuant to section 402(c)(3) 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 an amount not to exceed Amount D into a rollover IRA. Provided all other requirements of 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) .

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.

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If you have any questions concerning this letter, please contact xxxxxxxxxxxx,
xxxxxxxxxxxxxx, at xxxxxxxxxxxxxxx. All correspondence should be addressed to
SE:T: EP: RA:T3.

Sincerely yours,

for *Ada Perry*
Carolyn E. Zimmerman, Acting Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose