



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUN 14 2016

201637018

Uniform Issue List: 402.00-00

SET: EP: RAIT

Legend:

Taxpayer A =

Plan B =

Company C =

Account D =

Company E =

Individual F =

Company G =

Amount 1 =

Dear :

This is in response to your request for a private letter ruling dated January 7, 2016, as supplemented by correspondence dated April 8, 2016, from 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 received a distribution of Amount 1 from Plan B. Taxpayer A asserts that her inability to accomplish a rollover within

the 60-day period prescribed by section 402(c)(3) was due to a failure by Company E to follow Taxpayer A's instructions that Amount 1 be placed in an IRA account. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Beginning in 2009, Taxpayer A became a participant in her employer's 401(k) Plan, maintained with Company C. In June, 2012, Taxpayer A decided to transfer/rollover her account balance in Plan B to an IRA with Company E. Taxpayer A met with Individual F, her financial advisor at Company E. Taxpayer A instructed Individual F to open an IRA on her behalf. On June 11, 2012, the Plan Administrator for Plan B issued a check representing Taxpayer A's account balance (Amount 1) in Plan B. The check was made payable to "Company G TR IRA FBO Taxpayer A" and was received, on June 20, 2012, by the cashing department at Company E. Instead of depositing the check into an IRA as Taxpayer A instructed, the cashing department deposited it into Taxpayer A's existing investment account (Account D).

The Form 1099-R issued by the administrator of the 401(k) plan was marked "Taxable Amount" "0" and "G" for "Direct Rollover". Following an internal audit in 2014, Taxpayer A was advised by Company E that Amount 1 was deposited into Account D. Included with the ruling request is a letter from Company E in which it admitted it failed to follow Taxpayer A's instructions that the distribution of Amount 1 from Plan B be deposited into an IRA.

Based on the facts and representations, you request a ruling that the Internal Revenue 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. 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).

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 401(a)(31) 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.

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 the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was due a failure by Company E to follow Taxpayer A's instructions that Amount 1 be deposited into an IRA.

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 from Plan B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to transfer 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 section 402(c) of the Code.

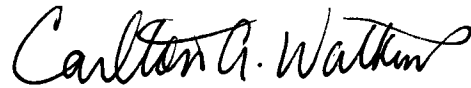
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the 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.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), , at or () .

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: