



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201644023

AUG 01 2016

Uniform Issue List: 403.05-00

SET:EP:RA:T1

Legend

Taxpayer A =

Plan B =

Plan C =

IRA D =

Non-IRA Account E =

Financial Institution F =

Financial Institution G =

Amount 1 =

Dear :

This is in response to your request received May 13, 2016, as supplemented by correspondence received on July 14, 2016, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) 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 distributions from Plan B and Plan C in excess of Amount 1. Taxpayer A asserts that the failure to accomplish a rollover of Amount 1 within the 60-day period described in section 402(c)(3) of the Code was due to an error on the part of Financial Institution G.

Taxpayer A participated in two 403(b) plans, Plan B and Plan C, which invested in annuity contracts purchased through Financial Institution F. Taxpayer A met with Financial Institution G to establish an investment plan that provided that Amount 1 would be rolled over into an IRA, IRA D, maintained by Financial Institution G. On March 1, 2015, Taxpayer A requested that her vested account balances in Plan B and Plan C be directly rolled over into IRA D. Realizing that only a partial distribution had been made in the form of a direct rollover to IRA D, Taxpayer A made another request for a direct rollover of Amount 1 into IRA D. However, on May 12, 2015, Amount 1 was transferred by Financial Institution F to Non-IRA Account E, a non-IRA account maintained by Financial Institution G.

The Form 1099-R issued by Financial Institution F reflected a direct rollover (Code G) from Plan B and Plan C of Amount 1, with a taxable amount of zero. Taxpayer A did not discover the error until February of 2016, when she received a Form 1099-DIV. Taxpayer A represents that Amount 1 has not been used for any other purpose.

Based on the above facts and representations, Taxpayer A requests a waiver of the 60-day rollover requirement under section 402(c)(3) of the Code with respect to the distribution of Amount 1 from Plan B and Plan C.

With respect to your ruling request, section 403(b)(8)(A) of the Code provides that if any portion of the balance to the credit of an employee in a section 403(b) annuity contract is paid to the employee in an eligible rollover distribution, and the employee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B), 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 403(b)(8)(B) of the Code provides that the rules of section 402(c)(2) through (7), (9) and (11) shall apply for the purposes of section 403(b)(8)(A).

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified employees trust is paid to the employee in an eligible rollover distribution and the employee 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, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(3)(A) of the Code 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 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.

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include:

- (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --
 - (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a specified period of 10 years or more,
- (B) any distribution to the extent the distribution is required under section 401(a)(9), and
- (C) any distribution which is made upon hardship of the employee.

Section 402(c)(8)(B) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than 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) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Rev. Proc. 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 and documentation submitted by Taxpayer A support her assertion that the failure to accomplish a rollover of Amount 1 within the 60-day period described in section 402(c)(3) of the Code was due to an error on the part

of Financial Institution G.

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. Provided all other requirements of section 402(c)(3), except the 60-day requirement, will be met with respect to the contribution of Amount 1 to an IRA, Amount 1 will be considered a rollover contribution within the meaning of section 402(c)(3).

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

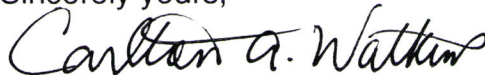
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

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

If you wish to inquire about this ruling, please contact
at . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
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Cc: