



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201822033

MAR 05 2018

SE:T:EP:RA:T1

Uniform Issue List: 402.00-00

Legend

Taxpayer A =

Plan B =

Account C =

Financial Institution D =

Amount 1 =

Amount 2 =

Dear :

This is in response to your request dated December 19, 2017, as supplemented by correspondence dated February 12, 2018, and February 17, 2018, in which you request, through your authorized representative, 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 requested ruling.

Taxpayer A represents that she received a total distribution from Plan B in the form of a check equal to Amount 1. Taxpayer A asserts that the failure to accomplish a rollover of Amount 2, a portion of total distribution Amount 1, within

the 60-day period described in section 402(c)(3) of the Code was due to her reliance on her spouse and misinformed belief that she had until the end of the taxable year in which to complete the rollover.

Taxpayer A participated in Plan B, an ESOP that was maintained by her employer and qualified under section 401(a) of the Code. Taxpayer A and her spouse jointly owned Account C, a non-IRA account maintained by Financial Institution D.

On January 14, 2017, Taxpayer A retired and requested a lump sum distribution from Plan B. On February 10, 2017, Taxpayer A deposited Amount 1 into a credit union account that she jointly owned with her spouse. Intending to roll over Amount 2 into an IRA that would be established with Financial Institution D, Taxpayer A and her spouse transferred Amount 2 to Account C on February 27, 2017, while leaving the remaining portion of Amount 1 in their credit union account. In late August or early September of 2017 Taxpayer A's spouse contacted their income tax preparer regarding rolling over Amount 2 into an IRA. At that time, Taxpayer A and her spouse learned that they had missed the rollover period which was 60 days.

Taxpayer A represents and the documentation shows that Amount 2 has been retained in Account C since the date of deposit into Account C on February 27, 2017.

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 2 from Plan B.

With respect to your ruling requests, section 401(a) of the Code provides the qualification rules applicable to retirement plans set up by employers exclusively to benefit their employees and their beneficiaries.

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

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)). The preceding sentence does not apply to the distribution to the extent that such portion is transferred to an eligible retirement plan described in section 402(c)(8)(B)(i) and (ii).

Section 402(c)(3)(A) of the Code provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under subparagraph (A) 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 occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

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)(6)(A) of the Code provides that the transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

Section 402(c)(6)(B) of the Code provides that the excess of the fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

Section 402(c)(6)(D) of the Code provides that no gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

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).

Revenue Procedure 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)(B) 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 2, a portion of total distribution Amount 1, within the 60-day period described in section 402(c)(3) of the Code was due to her reliance on her spouse and her misinformed belief that she had until the end of the taxable year in which to complete the rollover.

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 2. Provided all other requirements of section 402(c)(3), except the 60-day requirement, will be met with respect to the contribution of Amount 2 to an IRA, Amount 2 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.

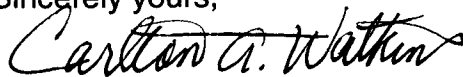
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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  
Deleted copy of this letter

Cc: