



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Employee Plans

September 1, 2021

Uniform Issue List: 402.00-00

Number: **202147015**

Release Date: 11/26/2021

Legend:

Taxpayer A =

Company B =

Plan C =

Traditional IRA D =

Roth IRA E =

Financial Institution F =

Financial Institution G =

Financial Advisor H =

Financial Advisor I =

Amount 1 =

Dear :

This is in response to your request dated April 5, 2021, as supplemented by correspondence dated August 17, 2021, in which you request, through your authorized representative, 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 penalties of perjury in support of your ruling request.

Taxpayer A represents that he received a distribution of designated Roth contributions and earnings from Plan C equal to Amount 1 with the intent of making a direct rollover of Amount 1 to a Roth IRA. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error made by Financial Institution F, which deposited Amount 1 into a traditional IRA.

In 2011, Taxpayer A established a designed Roth account under Plan C, a 401(k) plan established by his employer, Company B. On September 20, _____, Taxpayer A left employment with Company B and decided to elect a direct rollover of his designated Roth contributions under Plan C to a Roth IRA, Roth IRA E, with Financial Institution F. Taxpayer A had three IRAs with Financial Institution F, two traditional IRAs, one of which was Traditional IRA D, and Roth IRA E.

On October 4, _____, Taxpayer A completed a request for a direct rollover from Plan C to Financial Institution F. On October 14, _____, Financial Institution F received two checks from Financial Institution G, the third-party administrator for Plan C. One check was for Amount 1, which represented contributions and earnings in Taxpayer A's designated Roth account under Plan C. The other check represented pre-tax elective deferrals and earnings thereon under Plan C. Accompanying the checks was a letter from Financial Institution G that explained the two checks. Financial Institution F, however, deposited both checks into Taxpayer A's Traditional IRA D.

In July of _____, Taxpayer A became aware that Amount 1 had not been deposited into Roth IRA E when he met with his financial advisor, Financial Advisor H. However, Financial Advisor H told him that the Roth contributions could remain in Traditional IRA D as long as Taxpayer A could show that they were Roth contributions. On September 20, _____, Taxpayer A met with a new financial advisor, Financial Advisor I, who informed Taxpayer A that an error was made when Financial Institution F deposited Amount 1 into Traditional IRA D. On November 4, _____, Financial Institution F suggested that Taxpayer A submit a request for a waiver of the 60-day rollover requirement to correct the mistake.

Based on the foregoing facts and representations, you request that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount 1 from Plan C.

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 IRA constitutes one form of eligible retirement plan.

Section 402(c)(8) of the Code further provides that if any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

Section 402(c)(3)(B) of the Code provides 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.

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 401(a)(31) of the Code provides the rules governing "direct transfers of eligible rollover distributions."

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, provides 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, 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 documentation submitted by Taxpayer A is consistent with his assertion that the failure to accomplish a timely rollover was due to an error made by Financial Institution F, which deposited Amount 1 into a traditional IRA rather than a Roth 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 C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 to a Roth IRA. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, 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 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,

Sherri M. Edelman, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: