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

201216047

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

JAN 27 2012

Uniform Issue List: 402.00-00

T:EP:RA:T1

Legend:

Company L =

Decedent =

Taxpayer A =

Account B =

Account C =

Account D =

Amount E =

Amount F =

Date 1 =

Plan X =

Plan Y =

Dear :

In a letter dated November 9, 2011, your authorized representative requested, on your behalf, 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 a distribution from Plan X and Plan Y. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error by Company L in failing to inform Taxpayer A of her ability to roll over Amount F to an IRA account.

Decedent died on Date 1 at age . Decedent was self-employed and had established two qualified retirement plans, Plan X and Plan Y. Decedent, as the employer, was the named plan administrator for both plans. Up until the date of his death, Decedent was receiving required minimum distributions from Plan X and Plan Y. Plan X and Plan Y provided that on the participant's death, the balance remaining in the participant's account would be distributed to his designated beneficiary. Decedent's surviving spouse, Taxpayer A, was the designated beneficiary under Plan X and Plan Y. Taxpayer A is over the age of 70 ½ .

At the time of Decedent's death, the aggregate balance in Account B of Plan X and Account C of Plan Y equaled Amount E. Company L was responsible for investing the assets of Account B and Account C, and also handled Taxpayer A's personal accounts. Correspondence from Company L, which was sent on April 27, 2011, stated that, in order to receive a distribution of Account B and Account C, Taxpayer A should send a letter to Company L requesting a transfer of the balance in the accounts to Account D, Taxpayer A's personal account. The correspondence from Company L contained no information regarding Taxpayer A's ability to roll over the distributions into IRAs. Company L did not provide Taxpayer A with any forms regarding the transfer of assets and did not request that she sign a waiver for income tax withholding. Pursuant to Company L's instructions, on April 28, 2011, Taxpayer A sent a letter to Company L requesting that Accounts B and C be transferred to Account D. From May 3 through May 5, amounts equal to Amount F were transferred from Plan X and Plan Y to Account D.

In September, 2011, following the 60-day rollover period, the administrator of Decedent's estate learned that Account D was not an IRA account. Taxpayer A promptly sought legal advice and filed this request for a waiver. Taxpayer A represents that the amount in Account D is now equal to Amount F.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount F contained in section 402(c)(3)(A) of the Code.

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) of the Code 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)).

Code section 402(c)(3)(A) 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.

Code section 402(c)(3)(B) 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)(8) 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).

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.

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 provided by Taxpayer A is consistent with Taxpayer A's assertion that Taxpayer A's failure to accomplish a rollover of Amount F was due to the error of Company L in failing to inform Taxpayer A of her ability to roll over Amount F to an IRA account as required by section 402(f) of the Code.

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 F from Plan X and Plan Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount F to an 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 contributed amounts will be considered a rollover contribution within the meaning of section 402(c) of the Code.

Please note that this ruling does not authorize the rollover of Code section 401(a)(9) minimum required distributions.

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.

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

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.

If you have any questions regarding this ruling, you may contact .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

201216047

Notice of Intention to Disclose
Undeleted copy of this letter