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

201343029

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 31 2013

Uniform Issue List: 402.00-00

T:EP:RA:T1

Legend

Taxpayer A =

Plan B =

IRA Account C =

Account D =

Financial Institution E =

Company F =

Financial Institution G =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This is in response to your request dated December 15, 2012, as supplemented by correspondence received on May 21, 2013, 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 after terminating employment with his employer, Taxpayer A received a total distribution Amount 1 from Plan B in 20 . Taxpayer A asserts that his failure to accomplish a rollover of Amount 3, a portion of Amount 1, within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error by an employee of Financial Institution G which resulted in Amount 3 being deposited into Account D, a non-IRA account.

Over the years, Taxpayer A met with officials from Financial Institution G, which provides financial services to Plan B, to review his investments in Plan B. Taxpayer A maintained two accounts under Plan B. The assets in one account were invested in shares of Company F, a real estate investment company, and the assets in the other account were invested in a brokerage account.

On December 9, 20 , Taxpayer A completed a form requesting a total distribution from Plan B to be made by check payable to an IRA or qualified plan. On January 24, 20 , and February 1, 20 , sums totaling Amount 2 were distributed from Plan B and directly rolled over into IRA Account C maintained by Financial Institution E. Subsequently, Company F supplied a separate form to be used for rolling over the shares that were held in Taxpayer A's account under Plan B. Taxpayer A represents that an employee of Financial Institution G checked the box on the transfer form indicating that Taxpayer A's shares were to be transferred to an "Individual Account," rather than specifying an IRA account on the form. On May 4, 20 , the shares equal to Amount 3 were transferred from Plan B to a non-IRA account, Account D, with Company F. Taxpayer A discovered the error when he received a 20 Form 1099-DIV from Company F.

Taxpayer A submitted documentation from Financial Institution G stating that the paperwork for the rollover was processed incorrectly. Box 7 of the Form 1099-R received from Plan B indicates a direct rollover with respect to total distribution Amount 1. The shares remain in Account D and have not been used for any other purpose.

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

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)).

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)(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).

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 provided by Taxpayer A are consistent with Taxpayer A's assertion that his inability to complete a timely rollover of Amount 3 was due to the failure of an employee of Financial Institution G to correctly process the paperwork required for a timely rollover of Amount 3 into an IRA, which resulted in Amount 3 being deposited into Account D, a non-IRA account.

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 3 from Plan B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 to an IRA maintained by a bank or approved non-bank trustee or custodian. Provided all other requirements of section 402(c), 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).

Please note that this ruling does not authorize the rollover of minimum required distributions under 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 that may be applicable hereto.

This letter ruling is directed solely 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:
Notice of Intention to Disclose
Deleted copy of this letter