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

201419021

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

FEB 10 2014

Uniform Issue List: 403.05-00, 402.08-00

T:EP:RA:T1

Legend

Taxpayer A =

Taxpayer B =

Annuity Contract C =

Account D =

Financial Institution E =

Financial Institution F =

Financial Advisor G =

Amount 1 =

Dear

This is in response to your request dated June 11, 2013, as supplemented by correspondence dated January 8, 2014, 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"), as applicable to an annuity contract described in section 403(b).

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 equal to Amount 1 from Annuity Contract C, an annuity contract described under section 403(b) of the Code, which was maintained by Financial Institution F. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3)(A) was due to reliance on her financial advisor, Financial Advisor G, who mistakenly assumed that Amount 1 was distributed from a non-qualified annuity contract.

Taxpayer A was the sole beneficiary of Annuity Contract C, which was owned by her spouse, Taxpayer B. After Taxpayer B's death on December 16, 2003, Taxpayer A re-titled the annuity contract in her name. Because Financial Advisor G of Financial Institution F had managed Taxpayer B's investments prior to his death, Taxpayer A decided to transfer all investments to Financial Institution F to be managed by Financial Advisor G. To accomplish the transfer, Financial Advisor G instructed Taxpayer A to surrender Annuity Contract C by having a check issued directly to her and immediately delivering the check to Financial Institution F. On January 16, 2010, Taxpayer A executed a surrender request form and indicated on the form that no amounts should be withheld. Her request was processed on January 25, 2010, and a check equal to Amount 1 was issued to Taxpayer A. On February 2, 2010, Taxpayer A deposited Amount 1 into Account D, a non-IRA brokerage account maintained by Financial Institution F. Taxpayer A submitted a letter written by Financial Advisor G explaining his mistake in instructing Taxpayer A to deposit Amount 1 into a non-IRA account.

In April, 2012, Taxpayer A first discovered that Amount 1 had not been rolled over to an IRA account when she received a notice of deficiency from the Internal Revenue Service regarding the 2010 distribution from Annuity Contract C.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Annuity Contract C.

Section 403(b)(1)(E) of the Code provides, in relevant part, that any amount distributed out of an annuity contract described in section 403(b)(1) 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 403(b)(8)(A) of the Code provides that if any portion of the balance to the credit of an employee in a 403(b) annuity contract is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), and the employee transfers any portion of the distribution to an eligible retirement plan described in section 402(c)(8)(B), then the distribution to the extent transferred shall not be includible in gross income for the taxable year in which it was distributed.

Section 403(b)(8)(B) of the Code provides that rules similar to the rules of paragraphs (2) through (7) and (9) of section 402(c) shall apply for purposes of section 403(b)(8)(A).

Section 403(b)(10) of the Code provides, in pertinent part, that section 403(b) shall not apply to any annuity contract unless requirements similar to the requirements of section 401(a)(9) are met with respect to such annuity contract.

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.

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 an eligible retirement plan for purposes of subsection (c) as including an IRA described under section 408(a).

Section 402(c)(9) of the Code provides, in general, that where a surviving spouse receives a distribution attributable to the deceased spouse's eligible retirement plan, the surviving spouse shall treat the distribution in the same manner as if the surviving spouse were the employee.

Revenue Procedure 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)(B), 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 support Taxpayer A's assertion that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3)(A) was due to a mistake made by Financial Advisor G of Financial Institution F.

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 Annuity Contract C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 to an IRA. Provided all other requirements of section 402(c), 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) and will not be includible in gross income in accordance with section 403(b)(8).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 403(b)(10) 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.

201419021

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

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

cc: