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

201445028

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 14 2014

Uniform Issue List: 402.00-00

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Legend:

Taxpayer A = * * *

Financial Institution S = * * *

Amount A = * * *

Plan X = * * *

Fund Y = * * *

Dear * * *:

This is in response to your request dated September 3, 2013, in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution from Plan X totaling 10,323 shares of Fund Y stock. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to Taxpayer A's involvement with the medical condition of his wife and daughter as well as his own medical condition at the time. Taxpayer A further represents that Amount A has not been used for any other purpose.

Taxpayer A has submitted documentation evidencing his wife's, his daughter's, and his own illnesses during the 60-day period.

On December 16, 2010, Taxpayer A requested a distribution from Plan X for the purpose of rolling over the investment into a traditional individual retirement account (IRA). The distribution was split into two parts, a cash distribution of Amount A and 10,323 shares of Fund Y stock which included both before-tax shares and after-tax shares. The cash distribution of Amount A was sent directly to Financial Institution S in a trustee-to-trustee transfer and was timely deposited into Taxpayer A's traditional IRA. The stock distribution of 10,323 shares of Fund Y stock were sent as stock certificates to Taxpayer A's home address. Taxpayer A was unaware at the time that the stock certificates would be sent to his home address.

Prior to the distribution, Taxpayer A's disabled daughter gave birth to a baby with underdeveloped lungs and digestive system. Taxpayer A and his wife provided full time care for their disabled daughter and her baby. Taxpayer A's wife suffered back and knee problems as a result of the constant care they were required to provide leaving Taxpayer A as the sole caregiver for all of them.

In January of 2011, Taxpayer A was diagnosed with melanoma which was removed within the same month. In April of 2011, Taxpayer A was diagnosed with glaucoma.

On May 9, 2011, Taxpayer A discovered the stock certificates and requested that Financial Institution S deposit them into a Roth IRA. Taxpayer A paid the income tax on this transfer in 2011 and 2012. However, due to an error on the part of Financial Institution S, the shares of stock were not deposited into a Roth IRA.

Taxpayer A discovered in 2013 that the before-tax shares of Fund Y stock were not in a Roth IRA but were in a regular non-retirement brokerage account. While Financial Institution S was correcting this mistake they discovered that neither the before-tax shares nor the after-tax shares were deposited into a Roth IRA account and both were in non-retirement brokerage accounts. At this time, Financial Institution S also discovered that Taxpayer A's request to deposit the shares into a Roth IRA was not made within the required 60-day time period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60 day rollover requirement in section 402(c)(3) of the Code with respect to the distribution from Plan X totaling 10,323 shares of Fund Y stock.

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 individual retirement account constitutes one form of eligible retirement plan.

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 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 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. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

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

Section 1.401(a)(31)-1, Q&A-15, of the Regulations, provides in relevant part, 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.

Rev. Proc. 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) 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 his failure to accomplish a timely rollover was due to Taxpayer A's involvement with the medical condition of his wife and daughter as well as his own medical condition at the time.

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 from Plan X totaling 10,323 shares of Fund Y stock. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute the 10,323 shares of Fund Y stock into a Roth IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of the 10,323 shares of Fund Y stock into a Roth IRA will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

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.

If you wish to inquire about this ruling, please contact * * *. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose