



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

201452022

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 30 2014

U.I.L. 402.08-00

SET:EP:RA:T3

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XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX
Individual B = XXXXXXXXXXXXXXXXXXXX
Plan X = XXXXXXXXXXXXXXXXXXXX
IRA Y = XXXXXXXXXXXXXXXXXXXX

Company M = XXXXXXXXXXXXXXXXXXXX
Company N = XXXXXXXXXXXXXXXXXXXX
Amount A = XXXXXXXXXXXXXXXXXXXX
Amount B = XXXXXXXXXXXXXXXXXXXX
Stock Certificate C = XXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxx:

This is in response to a letter dated July 14, 2014, submitted on your behalf by your authorized representative, in which you request 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 presentations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution from Plan X by way of a combination of cash and a stock certificate. 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 Individual B, of Company N.

Upon termination of Taxpayer A's employment with Company M, he requested a distribution from Plan X in a combination lump-sum cash distribution and a direct rollover of Amount D to IRA Y with Company N.

On March 5, 2013, Taxpayer A received from Plan X a cash payment of Amount A, a check made payable to Company N in the amount of Amount B, and Stock Certificate C issued in the name of Company N with Taxpayer A's personal address.

Individual B of Company N told Taxpayer A that Company N could not accept Stock Certificate C because Taxpayer A's personal address was listed on the certificate and that Stock Certificate C had to be re-issued.

In addition, Individual B did not accept the check for Amount B, even though it was made payable to Company N for the benefit of Taxpayer A, but told Taxpayer A to hold the check until Stock Certificate C was re-issued.

On July 2, 2013, upon the re-issuance of Stock Certificate C, Taxpayer A deposited Stock Certificate C and the check for Amount B into IRA Y to complete the direct rollover of Amount D.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement with respect to the distribution of Amount D.

Section 402(c)(1) 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 included 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 (IRA) 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) of the Code.

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) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, 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 the actions of Individual B, of Company N. Specifically, Individual B declined to accept the check for Amount B until the stock certificate was re-issued, thus preventing a timely rollover.

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 D. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, were met, the contribution of Amount D to IRA Y on July 2, 2013, 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.

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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.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxx, at xxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling
Notice of Intention to Disclose

cc:

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