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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 05 2015

Uniform Issue List: 402.00-00

T:EP:RA:T2

Legend:

Taxpayer A: =

Plan B: =

IRA C =

Financial Institution D =

Amount E =

Amount F =

Amount G =

Dear :

This is in response to your request dated June 10, 2014, as supplemented by correspondence dated June 19, 2014, 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 representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution of Amount E on September 13, 2013, from Plan B. Federal taxes of 20%, Amount G, were withheld from the distribution and Taxpayer A received a check for Amount F. Taxpayer A asserts that his failure to accomplish a rollover within the 60 day period prescribed by section 402(c)(3) was due to an error by Financial Institution D. Taxpayer A further represents that Amount F has not been used for any other purpose.

Taxpayer A represents that it was his intention to contribute the full amount of the distribution to a rollover IRA with Financial Institution D. In accordance with instructions from Financial Institution D, Taxpayer A endorsed the check for Amount F, from Plan B, to them. Taxpayer A also wrote a check from his personal account for Amount G, the Federal tax withheld. Taxpayer A represents that both checks were then mailed to Financial Institution D. Taxpayer A has provided documentation from Financial Institution D showing the deposit of Amount G to his IRA account on October 30, 2013, within the 60 day rollover period.

Inexplicably, however, the endorsed check for Amount F, from Plan B, was not deposited into the IRA. Instead a check from Financial Institution D, dated November 5, 2013, for Amount F, was sent to Plan B. The check was payable to Plan B, FBO Taxpayer A. With a transmittal, dated December 5, 2013, beyond the 60 day rollover period, Plan B sent the check to Taxpayer A. Taxpayer A then had Financial Institution D exchange the check for one with him as the payee which was contributed to IRA C.

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

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 ("IRA") constitutes one form of eligible retirement plan.

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.

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 60 day rollover was the result of an error on the part of Financial Institution D in not timely depositing the check from Plan B of Amount F to his IRA account.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service waives the 60-day rollover requirement with respect to the distribution to you of Amount F from Plan B. Provided all other requirements of section 402(c) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, the transfer of Amount F to IRA C will be considered a rollover contribution within the meaning of section 402(c)(1).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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:T2

Sincerely yours,

Sherri Edelman, Manager,
Employee Plans Technical Group 2

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