



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201514020

JAN 09 2015

Uniform Issue List: 402.08-00

SE: T: EP: RA: T2

XXXXX
XXXXX
XXXXX

Legend:

Taxpayer	=	XXXXX
Decedent	=	XXXXX
Plan	=	XXXXX XXXXX
IRA	=	XXXXX XXXXX
Amount	=	XXXXX
Financial Institution	=	XXXXX
Court	=	XXXXX
State	=	XXXXX

Dear XXXXX:

This is in response to your request dated September 5, 2013, 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 representations have been submitted under penalty of perjury in support of the ruling requested

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Taxpayer represents that her husband, Decedent, requested a distribution from Plan totaling Amount. Taxpayer asserts that Decedent's failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to Decedent's death and subsequent decision by Financial Institution to disallow Amount to be rolled over into IRA within the 60-day period. Taxpayer further represents that Amount has not been used for any other purpose.

Taxpayer represents that Decedent was a participant in Plan. On August 27, 2012, Decedent elected to receive a distribution of Amount from Plan and established IRA at Financial Institution. On September 20, 2012, Decedent passed away. On December 21, 2012, the Plan issued two checks totaling Amount to Financial Institution for the benefit of Decedent.

When Financial Institution received the checks from Plan they refused to deposit them into IRA because Decedent had died. On May 13, 2013, Plan paid Amount, less income taxes withheld, to Decedent's estate.

Taxpayer represents that she is qualified as the administrator of Decedent's estate, and at all times since then has acted as the sole administrator of Decedent's estate. Taxpayer has provided a certificate from Court, evidencing this fact.

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

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, 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 IRA constitutes one form of an 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) (related to required minimum distributions).

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.

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

Section 1.401(a)(31)-1 of the Income Tax Regulations (the "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 is consistent with Taxpayer's assertion that Decedent's failure to accomplish a timely rollover was due to Decedent's death and subsequent decision by Financial Institution to disallow Amount to be rolled over into IRA within the 60-day period.

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 from Plan. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount into a Rollover IRA in Decedent's name with Taxpayer as the designated beneficiary. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 402(c)(3).

We note that the Rollover IRA into which Amount may be rolled over will not have a "designated beneficiary" as that term is defined in section 401(a)(9) of the Code. The section 401(a)(9) distribution period with respect to the Rollover IRA will be that applicable to an IRA owner who dies prior to attaining his required beginning date without having designated a beneficiary thereof.

The scope of the Taxpayer's powers is a matter of state law, in her capacity as sole administrator of Decedent's estate. This ruling assumes that Taxpayer's actions in contributing Amount into an IRA set up in Decedent's name is in accordance with the laws of State and pursuant to Taxpayer's authority as sole administrator of Decedent's estate.

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 in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

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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 is being sent to your authorized representatives.

If you wish to inquire about this ruling, please contact XXXXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc:

XXXXX
XXXXX
XXXXX
XXXXX