



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

201430030

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAY 01 2014

Uniform Issue List: 402.00-00

SET:EP:RA:T3

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Legend:

Taxpayer A = \*\*\*  
Company C = \*\*\*  
Trustee T = \*\*\*  
Amount A = \*\*\*  
Plan X = \*\*\*

Dear :

This is in response to your request dated February 24, 2014, in which you requested 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 from Plan X totaling Amount A. 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 mental condition and treatments for such condition which impaired his ability to accomplish a timely rollover. Taxpayer A further represents that Amount A has not been used for any other purpose.

Taxpayer A was diagnosed with Parkinson's disease in 2009. As part of his treatment, Taxpayer A was prescribed medications which cause confusion, memory loss and cognitive impairment. In January of 2011, Taxpayer A took a loan from Plan X. Loan re-payments were withheld bi-weekly from his paycheck from January 2011 to January 2013.

Taxpayer A's illness and the side effects from his medications negatively impair his cognitive function and memory and his ability to manage the details of day to day life. These side effects led eventually to his disability leave from employment on January 21, 2013.

In February of 2013, Taxpayer A was correctly informed by Company C's human resources department that he would have 12 months from the date that his disability leave began to satisfy the balance of the loan, plus an additional 60 days to effect a rollover. Taxpayer A maintains that the human resources representative told him "not to worry" until the March 21, 2014 deadline.

In July 2013, Company C changed Taxpayer A's employment status from "active (disabled)" to "terminated". This change triggered the 60-day cure period for the loan Taxpayer A took under Plan X. On September 27, 2013, the unpaid balance of the loan, Amount A, was classified as a distribution of a plan loan offset amount to Taxpayer A.

Taxpayer A represents that Company C did not inform him of the change in employment status except for an email sent to him in July 2013 informing him of the status of the loan and the impending distribution. However, due to his illness and the influence of medications that impaired his cognitive abilities, Taxpayer A did not see or read the email at the time. Taxpayer A realized a taxable event had occurred when he received Form 1099-R on January 31, 2014 showing the distribution.

Taxpayer A has submitted medical documentation showing the nature of his mental impairment.

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

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)(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 sections 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 1.402(c)-2, Q&A-9(a), of the Income Tax Regulations (the "Regulations") provides, in pertinent part, that a distribution of a plan loan offset amount, as defined in Q&A-9(b), is an eligible rollover distribution if it satisfies Q&A-3 of that section. In general, Q&A-3 provides that unless specifically excluded, an eligible rollover distribution means any distribution to an employee (or to a spousal distributee) from a qualified plan. Thus, an amount equal to the plan loan offset amount can be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the 60-day period under section 402(c)(3), unless the plan loan offset amount fails to be an eligible rollover distribution for another reason.

Section 1.402(c)-2, Q&A-9(b), of the Regulations provides that, for purposes of section 402(c), a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing a plan loan, the participant's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in a participant's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, e.g., where the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, as in default upon an employee's termination of employment or within a specified period thereafter. A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p) of the Code.

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 mental condition and treatments for such condition which impaired his ability to accomplish 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 A from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA or another qualified plan. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A 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 \*\*\* (ID# \*\*\*) at (\*\*\*)\*\*\*-\*\*\*. 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