



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201436055

JUN 13 2014

Uniform Issue List: 402.03-00

Legend:

Decedent A =

Taxpayer B =

Plan C =

Plan D =

Company E =

Financial Institution F =

State G =

Amount 1 =

Dear :

This is in response to your request dated October 2, 2013 and supplemented by correspondence dated April 8, May 5, and May 8, 2014, from 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") with respect to Decedent A. You are the personal representative of the estate of Decedent A. You also are the surviving spouse of Decedent A.

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

You represent that Decedent A requested a direct rollover of Amount 1 from Plan C to Plan D maintained with Company E. You assert that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to his death prior to the direct rollover being consummated. You further represent that Amount 1 has not been used for any other purpose.

Decedent A participated in Plan C and Plan D with Company E. Decedent A retired in 2004 and began receiving a monthly benefit from Plan C. In late 2012, Decedent A received notice from Company C that he had the option of requesting a lump-sum distribution from Plan C. In early 2013, Decedent A completed paperwork requesting a rollover of his Plan C distribution to Plan D. After Company E acknowledged receipt of the rollover request form but prior to the rollover, Decedent A died at age 64.

Decedent A in his Last Will and Testament named Taxpayer B as the personal representative and primary beneficiary of his estate. The Will grants Decedent A's personal representative all powers in the management of his estate and to do all acts proper and necessary to carry out the purpose of the Will. Taxpayer B was appointed personal representative under State G law.

Approximately one month after Decedent A's death, Taxpayer B received a check from Plan C made payable to Plan D FBO Decedent. Taxpayer B mailed the check with the rollover request form that Decedent A had completed to Company E for rollover into Plan D. Upon receipt of the check and rollover form, a representative of Plan D notified Taxpayer A that the rollover could not be completed since, due to the death of Decedent A, and the designation of Taxpayer B as beneficiary, the Plan D benefit was now in Taxpayer B's name. Taxpayer B was advised to open an estate account or put the money in an IRA. On two subsequent occasions with two separate financial institutions, Taxpayer B attempted to open an IRA in Decedent A's name but both financial institutions refused to open an IRA in the name of Decedent A. The check for Amount 1 that had been reissued and made out to Financial Institution F FBO Decedent A was not deposited and remains uncashed.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(B) of the Code with respect to the distribution of Amount 1.

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

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 includible in gross income for the taxable year in which paid.

Section 402(c)(3)(A) of the Code 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) of the Code 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) 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 sections 408(d)(3)(I) and 402(c)(3)(B) 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.

Under Rev. Proc. 2003-16, the death of a person who receives an eligible rollover distribution is one of the facts and circumstances that the Service will consider when deciding whether to grant a waiver of the 60-day rollover requirement. The information presented and the documentation submitted by Taxpayer B is consistent with her assertion that Decedent A's failure to accomplish a timely rollover of Amount 1 was due to his death.

Assuming that Taxpayer B, as personal representative of Decedent A's estate, is authorized under the laws of State G to complete a rollover of the distribution of Amount 1, pursuant to section 402(c)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan C. Taxpayer B is granted a period of 60 days from the issuance of this letter ruling to contribute an amount not more than Amount 1 into a rollover IRA or IRA annuity in the name of Decedent A. 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).

However, it is noted that, to the extent that you, as executor and sole beneficiary of Decedent A's estate, name a beneficiary of the IRA, section 1.401(a)(9)-4, Q&A-4, of the Regulations provides that a designated beneficiary must be a beneficiary as of the date of death. The Service will not treat any beneficiary named by you, as personal representative of Decedent A's estate, as a designated beneficiary under section 401(a)(9). Thus, for purposes of section 401(a)(9), the rollover IRA will have no designated beneficiary.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

In addition, the scope of Taxpayer B's authority as personal representative of Decedent A's estate is a matter governed by state law. This ruling assumes Taxpayer B's actions as personal representative of Decedent A's estate relevant to the ruling request contained herein are in accordance with the laws of State G.

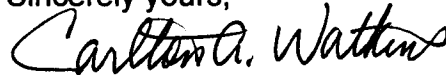
No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

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 representative.

If you wish to inquire about this ruling, please contact  
(ID ) at ( ) . Please address all correspondence to  
SE:T:EP:RA:T1.

Sincerely yours,

A handwritten signature in cursive script that reads "Carlton A. Watkins".

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: