



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201442070

JUL 21 2014

SE:T:EP:RA:T1

Uniform Issue List: 402.08-00

Legend:

Taxpayer A =

Individual B =

Plan X =

Amount 1 =

Amount 2 =

Amount 3 =

Company C =

Financial Advisor D =

Law Firm E =

Company F =

Dear :

This is in response to your request dated November 18, 2013, as supplemented by correspondence dated December 13, April 29, and May 21, 2013, 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").

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

Taxpayer A represents that she, as an alternate payee, received a distribution from Plan X totaling Amount 1. Taxpayer A represents that she timely rolled over Amount 2, 80% of Amount 1, but did not roll over Amount 3, 20% of Amount 1, which was withheld for federal income tax. Taxpayer A asserts that her failure to accomplish a rollover of Amount 3 within the 60-day period prescribed by section 402(c)(3) of the Code, was due to Taxpayer A's lack of funds and Taxpayer A's physical and mental condition, which impaired her ability to handle financial matters. Taxpayer A further represents that Amount 3 has been withheld for federal income tax purposes.

Taxpayer A represents that, pursuant to a Qualified Domestic Relations Order ("QDRO") under the Retirement Equity Act, she was an alternate payee assigned monies from her ex-spouse Individual B's account in Plan X. Prior to the Plan X distribution, Taxpayer A received two letters from Company C addressing Plan X's pre-distribution 60-day direct rollover election period and withholding on distributions.

Taxpayer A received a letter dated April 15, 2013, from Company C providing her 60 days (until June 14, 2013) to make and submit an affirmative distribution election with respect to her QDRO monies in Plan X. The letter and distribution election form allowed Taxpayer A to elect a lump sum distribution, or a direct rollover into a qualified individual retirement account ("IRA") or tax-qualified plan. The letter explained that an automatic lump sum distribution with 20 percent withholding would be made if she failed to return the election form by the due date. The letter included a tax information document entitled "Your Rollover Options," which explained that if a direct rollover is not done, an indirect rollover of the full distribution can be done within 60 days after receipt of the payment. The document further noted that in an indirect rollover, due to the 20% withholding requirements, an individual wishing to roll over the full amount must use other funds to make up for the amount withheld. Taxpayer A represents that she failed to open the letter and failed to return the election form due to her documented severe physical and mental condition which impaired her ability to manage her financial affairs.

Taxpayer A received a second letter from Company C sent on June 18, 2013, notifying her that the automatic Plan X distribution would be made. Although Taxpayer A opened this letter, Taxpayer A represents that she failed to understand the significance of its contents due to her worsening physical and mental condition.

Taxpayer A then received the July 2, 2013, distribution of Amount 1 from Plan X. A portion of the distribution was paid to her in the form of a distribution check dated July 2, 2013, in the amount of Amount 2. Amount 3 was withheld for federal income taxes.

Taxpayer A's father helped Taxpayer A hire a financial planning firm, Financial Advisor D, to address what to do with the distribution check. On August 7, 2013, Taxpayer A and her father met with Financial Advisor D and left the check and the letters from Company C for review by Financial Advisor D. On August 22, 2013, after reviewing the check and letters, Financial Advisor D explained to Taxpayer A that Company C's letters included information about the June 14, 2013, election deadline and that since Taxpayer A did not respond by the deadline, she received the automatic distribution with 20% withholding.

To address the situation, Taxpayer A completed an IRA account application at Financial Advisor D to open a traditional Rollover IRA with Company F and gave her consent for Financial Advisor D to contact an attorney on her behalf. On August 23, 2013, Taxpayer A retained the services of Law Firm E, to assist her with filing her request for a private letter ruling at the suggestion of Financial Advisor D.

Taxpayer A represents that, on August 29, 2013, Financial Advisor D cashed the July 2, 2013, distribution check for Amount 2 and, within the 60-day rollover period, deposited it into Taxpayer A's new IRA. Taxpayer A did not deposit Amount 3 into the IRA because she did not have access to funds to replace the withheld amounts. Taxpayer A represents that she now has Amount 3 available to deposit into an IRA.

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 3.

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 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).

Section 3405(c) of the Code provides that the payor of an eligible rollover distribution shall withhold from the distribution an amount equal to 20 percent of the distribution unless the distributee elects under section 401(a)(31)(A) to have the distribution paid directly to an eligible retirement plan.

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

Section 1.401(a)(31)-1, Q&A-15 of the Income Tax Regulations ("Regulations"), 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.

Section 1.402(c)-2, Q&A-12 of the Regulations provides that the eligible rollover distribution rules apply to distributions to a spousal distributee (such as a former spouse who is an alternate payee under a qualified domestic relations order).

Section 1.402(c)-2, Q&A-11 of the Regulations provides that because the amount withheld as income tax under section 3405(c) of the Code is considered an amount distributed under section 402(c) of the Code, an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60-day period, in addition to the net amount of the eligible rollover distribution actually received by the employee. If all or any portion of an amount equal to the amount withheld is not contributed as a rollover, it is included in the employee's gross income to the extent required under section 402(a), and also may be subject to the 10-percent additional income tax under section 72(t) 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.

Taxpayer A asserts that she did not roll over Amount 3 because she did not have the funds available during the 60-day rollover period. However, Taxpayer A also asserts that, although she was able to roll over Amount 2 within the 60-day rollover period, her severe mental and physical condition prevented her from electing a direct rollover prior to the 60-day rollover period. Taxpayer A asserts that, but for her severe mental and physical condition, she would have made a direct rollover and would have had the funds available to rollover.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 3

was mainly due to her severe mental and physical condition which prevented her from returning her withholding election form.

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 3 from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 3 into a IRA/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, the contribution of Amount 3 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 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 representatives.

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

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: