



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

201426032

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 02 2014

U.I.L. 402.08-00

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XXXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Individual B = XXXXXXXXXXXXXXXXXXXX

Plan X = XXXXXXXXXXXXXXXXXXXX

Agency N = XXXXXXXXXXXXXXXXXXXX

Amount C = XXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXX

Company E = XXXXXXXXXXXXXXXXXXXX

Board M = XXXXXXXXXXXXXXXXXXXX

Bank N = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxx:

This is in response to your request dated November 12, 2013, as supplemented by correspondence dated March 17, 2014, 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").

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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 C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error committed by a representative of Company E.

Taxpayer A represents that he intended to rollover his entire account balance in Plan X, upon his retirement from Agency N. Taxpayer A signed the withdrawal form he received from Plan X on March 4, 2013, and gave it to Individual B, his financial advisor, who told Taxpayer A that he would submit the rollover request on his behalf to Plan X.

A colleague of Individual B faxed the withdrawal forms to Plan X, but accidentally only transmitted the first two pages signed and did not submit the last two pages which directed Plan X to make a direct rollover to an IRA with Company E.

Because Plan X received only two pages of the total four pages of the withdrawal form, Plan X cashed out Taxpayer A's entire account balance. Consequently, on March 20, 2013, Taxpayer A received a check dated March 18, 2013 in the amount of Amount D (Amount C less applicable withholdings) from Plan X. Amount C is in the personal savings account of Taxpayer A with Bank N and has not been used for any other purpose.

Taxpayer A represents that he contacted Individual B who realized that an error had occurred in the fax transmittal of the withdrawal forms to Plan X. Individual B resubmitted the withdrawal forms on March 26, 2013, to resolve the problem but Plan X was unable to redo the distribution. Company E submitted a letter in support of this request acknowledging that Individual B, an employee of Company E, made an error in submitting the paperwork.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount C.

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 included 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) 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) 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)-1 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 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 an error committed by a representative of Company E.

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 C from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C into a rollover IRA. 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 C 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.

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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.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

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 xxxxxxxxxxxxxxxxxxxxxx, SE:T:EP:RA:T3, at xxxxxxxxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling
Notice of Intention to Disclose

cc:

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