



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201438036

JUN 26 2014

SE:TEP:RA:T3

U.I.L. 402.08-00

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Legend:

Taxpayer A	= XXXXXXXXXXXX
Individual B	= XXXXXXXXXXXX
Plan X	= XXXXXXXXXXXX
Plan Y	= XXXXXXXXXXXX
Company N	= XXXXXXXXXXXX
Company M	= XXXXXXXXXXXX
Amount A	= XXXXXXXXXXXX
Amount B	= XXXXXXXXXXXX
Amount C	= XXXXXXXXXXXX

Dear xxxxxxxxxx:

This is in response to a letter dated November 25, 2013, as supplemented by correspondence dated February 12, 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").

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

Taxpayer A represents that he received distributions from Plan X and Plan Y in the amount of Amount A and Amount B respectively and that he intended to make a trustee-to-trustee transfer of the distributions totaling Amount C into a rollover IRA with Company M. Taxpayer A asserts that his failure to accomplish rollovers within the 60-day periods prescribed by section 402(c)(3) of the Code was due to an error made by his financial advisor, Individual B, of Company N.

On November 17, 2011, Taxpayer A received a check for Amount B from Plan Y. The check was made payable to Company M FBO Taxpayer A. Also, on December 1, 2011, Taxpayer A received a check for Amount A from Plan X. The check was payable to Company M IRA FBO Taxpayer A.

On December 27, 2011, within the 60-day period, Taxpayer A took the checks to Company M intending to deposit them in an IRA and he signed Company M's application form given to him by Individual B. However, Individual B mistakenly had him sign an investment application rather than an IRA application. Accordingly, Company M opened a non-IRA account for Taxpayer A. Documentation submitted shows that Individual B acknowledged that due to a paperwork error on his part, a non-IRA account was established with Company M instead of an IRA account as Taxpayer A intended.

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

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 made by his financial advisor, Individual B, of Company N.

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 (Amount A from Plan X and Amount B from Plan Y). Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met, the contribution of 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.

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.

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

If you wish to inquire about this ruling, please contact xxxxxxxx xxxxxxxxxx at xxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling  
Notice of Intention to Disclose

Cc: xxxxxxxxxxxxxxxx