



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

201522012

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAR 02 2015

Uniform Issue List: 402.00-00

SE:T:EP:RA:T1

Legend

Taxpayer A =

Plan B =

Plan C =

Account D =

Financial Institution E =

Amount 1 =

Amount 2 =

Dear :

This is in response to your request dated June 28, 2014, as supplemented by correspondence received on November 21, 2014, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) 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 B totaling Amount 1 and a distribution from Plan C totaling Amount 2. Taxpayer A asserts that his failure to accomplish a direct rollover of Amount 1 and Amount 2 was due to a misunderstanding that Account D was an IRA.

Taxpayer A participated in Plan B, a profit sharing plan, and Plan C, a defined benefit plan, which were maintained by his former employer. In late 2013, he received notification that Plan B and Plan C were being terminated. Taxpayer A also received "Participant Distribution Election" forms regarding the disposition of his account under Plan B and his benefit under Plan C. On each of these forms, Taxpayer A elected a direct rollover of his entire, vested accrued benefit. On the forms, Taxpayer A identified Account D as the name of the IRA or retirement plan to which the assets should be directly rolled over.

On October 7, 2013 Amount 1 was directly transferred by Plan B to Account D and on January 6, 2014, Amount 2 was directly transferred by Plan C to Account D. However, Account D, maintained by Financial Institution E, was a non-IRA account. As reflected on the Participant Distribution Election forms, Taxpayer A believed that he had directly rolled over Amounts 1 and 2 into an IRA account. Account D was labeled a "Retirement" fund account, and Taxpayer A had previously had an IRA maintained with Financial Institution E. Taxpayer A received the Forms 1099-R for the 2013 year that identified the distributions as direct rollovers. When Taxpayer A received a 2013 Form 1099-DIV for a dividend distribution from Account D, he realized his mistake and promptly requested a waiver from the Service. In his request, Taxpayer A provided documentation showing that Amount 1 and Amount 2 have not been used for any other purpose.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B and the distribution of Amount 2 from Plan C.

With respect to your ruling requests, section 401(a) of the Code provides the qualification rules applicable to retirement plans set up by employers exclusively to benefit their employees and their beneficiaries.

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) of the Code which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 (relating to annuities).

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, generally, that if any portion of an eligible rollover distribution from a qualified employees trust is paid to the employee in an eligible rollover distribution and the employee 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, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(3)(A) of the Code provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under subparagraph (A) 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 occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Section 402(c)(6)(A) of the Code provides that the transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

Section 402(c)(6)(B) of the Code provides that the excess of the fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

Section 402(c)(6)(D) of the Code provides that no gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

Section 402(c)(8) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity

described in section 408(b) (other than endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Section 402(f) of the Code provides for a written explanation to recipients of distributions eligible for rollover treatment. Section 402(f)(1) provides, in pertinent part, that the plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

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 federal Income Tax Regulations ("Regulations"), Question & Answer -3, provides, generally, that a direct rollover that satisfies section 401(a)(31) of the Code is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee. A direct rollover may be accomplished by any reasonable means of direct payment to an eligible retirement plan. Reasonable means of direct payment include, for example, a wire transfer or the mailing of a check to the eligible retirement plan.

Section 1.401(a)(31)-1 of the 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.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 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.

The information and documentation submitted by Taxpayer A support his assertion that the failure to accomplish a direct rollover of Amount 1 and Amount 2 was due to a misunderstanding that Account D was an IRA. Taxpayer A clearly intended a direct rollover of his retirement savings into an IRA.

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 1

and Amount 2. Provided all other requirements of section 402(c)(3), except the 60-day requirement, will be met with respect to the contributions of Amount 1 and Amount 2 to an IRA, Amount 1 and Amount 2 will be considered rollover contributions within the meaning of section 402(c)(3).

This letter ruling is based on the assumption that Plan B and Plan C are qualified plans under section 401(a) of the Code.

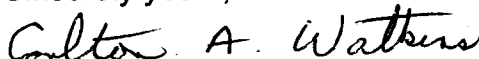
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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  
Please address all correspondence to

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:  
Notice of Intention to Disclose  
Deleted copy of this letter