



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAR 03 2010

UI No. 402.00-00

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

SE:TEP:RA:TY

LEGEND:

Taxpayer A	=	XXXXXXXXXXXXXXXXXXXX
Employer M	=	XXXXXXXXXXXXXXXXXXXX
Plan X	=	XXXXXXXXXXXXXXXXXXXX
Company F	=	XXXXXXXXXXXXXXXXXXXX
Financial Institution B	=	XXXXXXXXXXXXXXXXXXXX
Amount D	=	XXXXXXXXXXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXXXXXXXXXX
Date 3	=	XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXX

This is in response to your ruling request dated March 9, 2009, as supplemented by a letter dated January 29, 2010, 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, age 75, represents that she received a distribution of Amount D from Plan X. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to the failure of Company F in failing to provide proper notice of Taxpayer A's right to elect an eligible rollover distribution as required under section 402(f) of the Code.

Taxpayer A represents that she was a participant in Plan X, an employee retirement plan sponsored by Employer M which was a qualified plan as described in section 401(a) of the Code. Company F was the administrator of Plan X. Taxpayer A states that she was contacted by Company F regarding changing investments within Plan X. She informed Company F that she did not want to make any risky investments and requested that Company F transfer Amount D to Financial Institution B. On Date 1, Company F electronically transferred Amount D from Plan X to Taxpayer A's checking account with Financial Institution B. Taxpayer A

XXXXXXXXXX

represents that Company F did not provide her with any written advice or any direction regarding the 60-day rollover rules and the tax consequences of this distribution as required in section 402(f) of the Code, nor was oral advice given.

Taxpayer A states that, on Date 2, she told a representative of Financial Institution B that Amount D were retirement funds. However, Taxpayer A did not understand that Amount D should have been placed into another retirement vehicle. On Date 2, Amount D was placed in a certificate of deposit, at Financial Institution B. Taxpayer A did not become aware of the tax consequences of the distribution until Date 3, while consulting with her tax preparer. Taxpayer A further represents that Amount D has not been used for any purposes.

Based on the facts and representations, a ruling is requested that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D.

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

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, in general, that if any portion of an eligible rollover distribution from a qualified trust is transferred to an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(3)(A) of the Code provides that, except as provided in subparagraph (B), paragraph (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 section 402(c)(3)(A) 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 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).

Section 402(c)(8) of the Code defines an "eligible retirement plan" as (i) an individual retirement account described in section 408(a) of the Code, (ii) an individual retirement annuity described in section 408(b) of the Code (other than an endowment contract), (iii) a qualified trust, (iv) an annuity plan described in section 403(a) of the Code, (v) an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b) of the Code.

Section 402(f) of the Code provides for a written explanation to recipients for 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

XXXXXXXXXX

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.

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 408(d)(3)(I), 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 provided by Taxpayer A is consistent with Taxpayer A's assertion that Taxpayer A's failure to accomplish a rollover of Amount D was due to the failure of Company F in failing to provide proper notice of Taxpayer A's right to elect an eligible rollover distribution as required under section 402(f) of the Code.

Therefore, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D, to 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, the contributed amounts will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

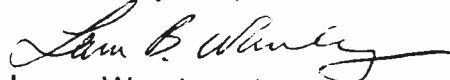
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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.

If you wish to inquire about this ruling, please contact XXXXXXXX I.D. XXXXX at XXXXXXXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura Warshawsky, Manager  
Employee Plans Technical Group 4

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