

201245029



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 15 2012

Uniform Issue List: 402.00-00

T.E.P.R.A.T.I

Legend:

- Taxpayer A =
- Company B =
- Plan C =
- Financial Institution D =
- Account E =
- Account F =
- Account G =
- Account H =
- Financial Institution I =
- Company J =
- Company K =
- Amount 1 =
- Amount 2 =
- Amount 3 =
- Amount 4 =
- Amount 5 =
- Amount 6 =
- Amount 7 =

Dear :

This letter is in response to a request for a letter ruling dated August 3, 2011, as supplemented by correspondence dated April 16 and 26, 2012, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code ("Code"), regarding the distribution of 4,499 shares of Company B stock from Plan C.

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

Taxpayer A represents that she received a distribution of Company B stock from Plan C. Taxpayer A asserts that her failure to accomplish a rollover of the distribution within the 60-day period prescribed by section 402(c)(3) of the Code was due to a failure by Company K to follow Taxpayer A's instructions that the 4,499 shares of Company B stock be deposited into an individual retirement account (IRA) under section 408(a) of the Code, to be maintained with Financial Institution I. Company K is a subsidiary firm of Financial Institution I.

Taxpayer A participated in Plan C, an employee stock ownership plan under section 409(a) of the Code, maintained by Company B. Funds in Plan C were held by Financial Institution D. Taxpayer A was laid off from Company B in 2009. During October of 2009, Taxpayer A requested a total distribution from Plan C. On October 15, 2009, Taxpayer A signed a Transfer of Assets Form provided by Company K and under the section of the form labeled "Receiving Account Type," the box marked "Traditional or Rollover IRA" was checked. All transfers were designated on the form as "Transfer all assets In Kind."

Financial Institution D acted as transfer agent for Company B and issued Taxpayer A a distribution statement that showed Taxpayer A's intent was to have her account balance valued at Amount 1 in Plan C transferred to an IRA in a direct rollover. The statement showed a direct rollover on October 16, 2009, of Amount 2 of stock value while the difference of Amount 3 (Amount 1 value in account balance less Amount 2 value of stock distributed in kind) represented a net cash payment for partial share of stock. Amount 3 was rolled over and deposited in IRA Account H with Financial Institution I. However, through a series of errors on the part of Company K, all 4,499 shares of Company B stock (Amount 2) were deposited into Account E, a non-IRA account with Financial Institution I.

After the transfer of the Company B stock into Account E, a representative of Company K recommended that Taxpayer A sell the Company B stock in order to diversify her investments. Taxpayer A agreed to sell the stock, believing that the stock was held in an IRA and, therefore, no tax consequences would result from the sale of the stock which had appreciated in value.

On November 23, 2009, within the 60-day rollover period, 1,957 shares of Company B stock were sold for Amount 4. On March 5, 2010, after the 60-day rollover period had expired, the remaining 2,542 shares of stock were sold for Amount 5. Initially, both sales proceeds were deposited into Taxpayer A's checking account (Account F), per account set-up instructions by Company K. Subsequently, the proceeds from both sales of stock were deposited into non-IRA Account G. The total sales proceeds from the original 4,499 shares equaled Amount 6 which includes the appreciation in value of Amount 7 (Amount 6 less Amount 1).

The failed rollover of Amount 2 from Plan C to Account E was discovered during the preparation of Taxpayer A's 2009 Form 1040 tax return (more than 60 days after the expiration of the 60-day rollover period).

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(A) of the Code with respect to the distribution of the 4,499 shares of Company B stock from Plan C, and that you be allowed to transfer into a rollover IRA the gross proceeds (Amount 6) derived from the sale of the 4,499 shares of stock.

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) of the Code 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).

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) 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)(6) of the Code provides rules for the sale of distributed property – For purposes of this subsection: (A) Transfer of proceeds from sale of distributed property treated as transfer of distributed property. 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; (B) Proceeds attributable to increase in value. The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution; (C) Designation where amount of distribution exceeds rollover contribution. In any case where part or all of the distribution consists of property other than money: (i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and (ii) the portion of the money or other property which is to be treated as included in the rollover contribution, shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable. (D) Nonrecognition of gain or loss. 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 401(a)(31) of the Code provides the rules for governing “direct transfers of eligible rollover distributions”.

Section 1.401(a)(31) 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 sections 408(d)(3)(I) and 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 presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of the 4,499 shares of Company B stock was due to Company K’s failure to follow her written instruction that the Company B stock be deposited into an IRA maintained with Financial Institution I. Had Company K followed Taxpayer A’s directive, the gross proceeds (Amount 6) derived from the stock sales in 2009 and 2010 would have been paid into the IRA and would not be treated as taxable income.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the sales proceeds (Amount 6) of 4,499 shares of Company B stock distributed from Plan C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 6 into an eligible retirement plan or rollover IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contribution, such amount will be considered a rollover contribution within the meaning of section 402(c) of the Code.

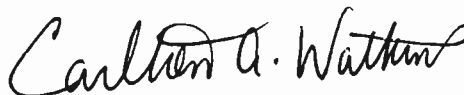
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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 ruling has been 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 (I.D. #), , at () .

Sincerely yours, .



Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: