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

201247020

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 30 2012

Uniform Issue List: 402.00-00

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T:EP:RA:T2

Legend:

| | | |
|---|---|---|
| Decedent | = | *** |
| Taxpayer A | = | *** |
| Plan X | = | ***<br>*** |
| IRA Y | = | ***<br>***<br>*** |
| Date 1 | = | *** |
| Date 2 | = | *** |
| Date 3 | = | *** |
| Date 4 | = | *** |
| Date 5 | = | *** |
| Date 6 | = | *** |
| Date 7 | = | *** |
| Date 8 | = | *** |
| Date 9 | = | *** |
| Company V | = | *** |

Company F = ***

Amount 1 = ***

Amount 2 = ***

State N = ***

Dear ***:

This is in response to your request dated September 10, 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 represents that he attempted a rollover from Plan X totaling Amount 1. 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 the accepting bank's failure to timely process the attempts at transfer and the death of Decedent. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Decedent, who was born on Date 1 and died on Date 7 not having attained age 70 1/2, was a resident of State N. Decedent was not married at his death and was survived by his brother, Taxpayer A. As of his death, Decedent was a participant in Plan X, which is represented to be a retirement plan meeting the requirements of section 401(a) of the Code, under which Decedent had a lump sum benefit of Amount 1. On Date 2, Decedent appointed Taxpayer A as his power of attorney under the laws of State N, with the authority to make decisions on Decedent's behalf for, among other things, all employment issues, including, but not limited to benefits and elections, insurance, effectuating Decedent's retirement, electing pension options and any and all other retirement related matters. Taxpayer A is also the nominated executor of Decedent's estate and its sole distributee and sole beneficiary. On Date 3, as Decedent's authorized agent, Taxpayer A retired Decedent from Company V and signed a pension election authorization form that authorized Company V to pay out a lump sum from Plan X for Amount 1.

Further, while Decedent was still alive, Taxpayer A executed a direct debit authorization permitting Company V to transfer the lump sum payment from Plan X of Amount 1 to IRA Y, an IRA account for the Decedent established on Date 4, which designated Taxpayer A as the sole beneficiary. Taxpayer A represents that prior to Decedent's death, on Dates 5 and 6, attempts to complete wire transfers from Plan X to IRA Y for Amount 1 were disallowed by the accepting bank because the bank claimed the wire instructions were too long to process. On Date 8, after Decedent's death, Company V issued a check for Amount 1 to Company F, the custodian of IRA Y. However, since the Decedent had passed away, the check could not be deposited into IRA Y. Further, Company F closed out IRA Y after Decedent had passed away. On Date 9, Company V issued a new check made payable to the Decedent's estate for Amount 2 (Amount 1 less federal income tax withholding).

Taxpayer A represents that it was clearly Decedent's intent to timely and directly contribute his lump sum benefit of Amount 1 from Plan X to the IRA Y, a newly created IRA established in Decedent's name to receive Amount 1, and that Decedent, through the actions of his authorized agent, Taxpayer A, took all appropriate and reasonable actions to achieve that result.

Based on the above facts and representations, you, through your authorized representative, request that Taxpayer A be permitted to deposit the portion of Decedent's account in Plan X authorized by Company V (not to exceed Amount 1) into an IRA ("Rollover IRA") in the name of the Decedent (deceased) for the benefit of Taxpayer A within sixty (60) days of the date of notification to Taxpayer of the granting of this letter ruling.

With respect to your ruling requests, Section 402(a) of the Code provides that, except as otherwise provided in section 402, any amount actually paid or distributed from a trust described in section 401(a) which is tax exempt under section 501(a) shall be taxed 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)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) qualified retirement plan is transferred into 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 with respect to section 402(c)(3)(B), the exclusion from income under section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distribute received the property distributed.

Section 402(c)(3)(B) provides that this 60-day requirement may be waived 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.

Section 401(a)(31) 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, 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 caused by both the failure of the accepting bank to process his attempts to wire transfer Amount 1 from Plan X to IRA Y, and the death of Decedent.

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 an amount authorized by Company V (not to exceed Amount 1) from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute an amount authorized for distribution from Plan X by Company V not exceeding Amount 1 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, an amount authorized for distribution from Plan X by Company V not exceeding Amount 1 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.

We note that the Rollover IRA into which an amount authorized by Company V be distributed from Plan X (not to exceed Amount 1) may be rolled over will not have a "designated beneficiary" as that term is defined in section 401(a)(9) of the Code. The section 401(a)(9) distribution period with respect to the Rollover IRA will be that applicable to an IRA owner who dies prior to attaining his required beginning date without having designated a beneficiary thereof. Accordingly, the entirety of Decedent's interest in Plan X that is rolled over into the Rollover IRA must be distributed to Taxpayer A no later than the end of the calendar year containing the fifth anniversary of Decedent's death.

Finally, the scope of Taxpayer A's authority both under the executed power of attorney while Decedent was alive and as an executor of Decedent's estate after Decedent's death are matters governed by state law. This ruling assumes Taxpayer A's actions relevant to the ruling request contained herein are in accordance with the laws of State N and taken pursuant to Taxpayer A's authority as Decedent's power of attorney while Decedent was alive and as executor of Decedent's estate after Decedent's death.

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.

201247020

If you wish to inquire about this ruling, please contact ***********************************. at ***-***-**** (phone-not a toll-free number) or (FAX).

Sincerely yours,

(Jason Levine, Acting for Donnie Littlejohn)

Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: ***
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