



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201341038

JUL 19 2013

T. EP. R A: T3

U.I.L. 402.08-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX.
Individual B = XXXXXXXXXXXXXXXXXXXX
Plan X = XXXXXXXXXXXXXXXXXXXX
Credit Union B = XXXXXXXXXXXXXXXXXXXX
Company N = XXXXXXXXXXXXXXXXXXXX
Amount A = XXXXXXXXXXXXXXXXXXXX
Amount B = XXXXXXXXXXXXXXXXXXXX
Amount C = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This is a revision of my ruling letter dated April 30, 2013. In your letter dated October 21, 2012, as supplemented by correspondence dated May 3, 2013, and June 3, 2013, you requested 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 received a distribution from Plan X totaling Amount A. 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 his having received conflicting advice from the Credit Union B and from his tax advisor compounded by his preoccupation with the medical condition and death of his mother, Individual B.

On December 6, 20 , Taxpayer A received a statement from Company N, indicating the distribution of Amount A less Federal Income Tax withholding in the amount of Amount B from Plan X for a net distribution of Amount C. Upon receipt of the statement, Taxpayer A called his former employer, Company N, and was informed that a check representing his investment in Plan X had been mailed to him on December 2, 20 . Taxpayer A represents that he told Company N that he had never requested nor received the check that was mailed to him on December 2, 20 . On February 29, 20 , Company N re-issued the check for the amount of Amount C. Also, on February 29, 20 , Taxpayer A attempted to open an IRA with Credit Union B but was advised by his accountant that he had missed the deadline. On March 30, 20 , Taxpayer A deposited Amount C into a non-IRA account with Credit Union B intending to research his rollover options.

Taxpayer A also represents that he was the primary caregiver of Individual B starting on August 13, 20 , until the death of Individual B on April 3, 20 .

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

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.

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 his having received conflicting advice from the Credit Union B and from his tax advisor compounded by his preoccupation with the medical condition and death of his mother, Individual B.

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 A from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A 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 Amount A 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.

This ruling supersedes the prior ruling issued to Taxpayer A on April 30, 2013.

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 xxxxxxxxxxxxxxxxxxxxxxxx,
SE:T:EP:RA:T3, at xxxxxxxxxxxxxxxxxxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling
Notice of Intention to Disclose