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

201405030

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 05 2013

Uniform Issue List: 402.00-00

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Legend:

Taxpayer A: * * *

Individual L: * * *
* * *

Financial Institution U: * * *

Financial Institution J: * * *

Amount C: * * *

Plan Y: * * *

Dear * * *:

This is in response to your request dated May 31, 2013, as supplemented by correspondence dated September 18, 2013, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (Code).

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 from Plan Y of 1,037 shares of Financial Institution J stock. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to Individual L giving incorrect advice for Taxpayer A's situation. Taxpayer A further represents that the 1,037 shares of Financial Institution stock remain in her investment account with Financial Institution U.

On November 29, 2012, Taxpayer A's stockbroker, Individual L, and Taxpayer A discussed the rollover of Taxpayer A's investment in Plan Y of Financial Institution J, her former employer's retirement plan. A portion of Taxpayer A's investment in Plan Y was in a Financial Institution J stock fund which Taxpayer A wanted to maintain. Individual L told Taxpayer A that she could do a Net Unrealized Appreciation (NUA) transaction which would result in tax savings and allow her to maintain the investment. Taxpayer A and Individual L mistakenly believed that the stock fund investment was actual shares of stock.

Also on November 29, 2012, Taxpayer A and Individual L called Financial Institution J to request a rollover from Plan Y. Individual L told Financial Institution J that Taxpayer A wanted her investment in the Financial Institution J stock fund to be distributed as stock, rather than rolled over. Financial Institution J managed the Financial Institution J stock fund and would only allow a distribution from this fund to be in cash or converted into Financial Institution J stock. On December 3, 2012, Taxpayer A's investment in the Financial Institution J stock fund was converted into 1,037 shares of Financial Institution J stock and were electronically transferred to Financial Institution U and deposited in Taxpayer A's regular brokerage account. On December 4, 2012, Taxpayer A received a check for Amount C, the funds in her Plan Y account, less the value of the 1,037 shares of the Financial Institution J stock. Taxpayer A deposited Amount C into her IRA on December 4, 2012.

When Taxpayer A received her 2012 Form 1099-R, the taxable amount was dramatically different from what she had anticipated. Taxpayer A's tax preparer and Individual L discussed the NUA transaction and realized that it required the investment in the Financial Institution J stock fund be in shares of Financial Institution J stock prior to the distribution from Plan Y. Individual L had mistakenly arranged for the distribution on behalf of Taxpayer A.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of the 1,037 shares of Financial Institution J 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) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account 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) 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 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 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 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 her assertion that her failure to accomplish a timely rollover was caused by the fact that Individual L mistakenly arranged for a distribution of stocks rather than a rollover.

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 the 1,037 shares of Financial Institution J stock. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute the 1,037 shares of Financial Institution J stock 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 contribution of 1,037 shares of Financial Institution J stock to a Rollover IRA 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 * * * (ID * * *) at * * *. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose