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

201528043

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

041515

Uniform Issue List: 402.00-00

SE:T:EP:RA:T1

Legend

Taxpayer A =

Plan B =

Fund C =

IRA D =

Roth IRA E =

Financial Institution F =

Financial Institution G =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This is in response to your request dated June 18, 2013, as supplemented by correspondence dated February 20, 2014, December 18, 2014, March 6, 2015, and March 25, 2015, submitted on your behalf by 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 (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 B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period described in section 402(c)(3) of the Code was due to Plan B's mishandling of Taxpayer A's request to roll over Amount 1 into IRA D.

Taxpayer A participated in Plan B, a profit sharing plan that was maintained by his employer. Financial Institution G was the custodian for Taxpayer A's account in Plan B. A portion of Taxpayer A's account in Plan B, equal to Amount 1, was invested in Fund C. Fund C was an investment fund maintained by Financial Institution G.

In 20 , Taxpayer A established IRA D, an individual retirement arrangement described in section 408(a) of the Code, for the purpose of rolling over Amount 1 from Plan B to IRA D. IRA D was maintained by Financial Institution F. In order to effectuate the rollover, the administrator for Plan B advised Taxpayer A's bookkeeper to send a letter to Financial Institution G requesting that the name of Taxpayer A's account in Fund C be retitled from "Plan B FBO Taxpayer A" to "Taxpayer A Rollover IRA." On May 19, 20 , Taxpayer A's bookkeeper sent this letter. Taxpayer A periodically received statements from Fund C that referred to Taxpayer A's IRA. Subsequently, Taxpayer A received a Form 1099-R for the 20 taxable year showing a complete distribution from Plan B, inclusive of Amount 1, with a taxable amount of zero. Taxpayer A believed that he received the Form 1099-R for 20 rather than 20 because Plan B was in the process of terminating.

In 2012, Taxpayer A decided to convert traditional IRA D into a Roth IRA. At this time, he was informed by Financial Institution F that it did not serve as the IRA custodian for his interest in Fund C. Financial Institution F agreed, however, to take custody of Amount 1 and hold Amount 1 in IRA D. On December 28, 2012, a portion of Amount 1 equal to Amount 2 was deposited into IRA D. On January 2, 2013, Amount 2 was converted into Roth IRA E maintained by Financial Institution F. Taxpayer A represents that Amount 3 was also deposited into IRA D and on January 14, 2013, Amount 3 was converted from IRA D to Roth IRA E. Amount 2 and Amount 3 exceed Amount 1.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B.

With respect to your ruling requests, section 401(a) of the Code provides the qualification rules applicable to retirement plans set up by employers exclusively to benefit their employees and their beneficiaries.

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) of the Code which is exempt from tax under section 501(a) shall be taxable 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) 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, generally, that if any portion of an eligible rollover distribution from a qualified employees trust is paid to the employee in an eligible rollover distribution and the employee 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, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(3)(A) of the Code provides, generally, that section 402(c)(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 subparagraph (A) 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 occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Section 402(c)(6)(A) of the Code provides that 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.

Section 402(c)(6)(B) of the Code provides that the excess of the fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

Section 402(c)(6)(D) of the Code provides that 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 402(c)(8) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

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

Revenue Procedure 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)(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 and documentation submitted by Taxpayer A support his assertion that his failure to accomplish a rollover within the 60-day period described in section 402(c)(3) of the Code was due to Plan B's mishandling of Taxpayer A's request to roll over Amount 1 into IRA D.

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 1. Provided all other requirements of section 402(c)(3), except the 60-day requirement, will be met with respect to the contribution of Amount 1 to IRA D, Amount 1 will be considered a rollover contribution within the meaning of section 402(c)(3). The excess of the total of Amount 2 and Amount 3 over Amount 1 cannot be rolled over to an IRA.

This letter ruling is based on the assumption that Plan B was a qualified plan under section 401(a) 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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact
at . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

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

Cc: