



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

201826018

APR 04 2018

SE:T:EP:RA:T1

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 402.00-00

Legend

Taxpayer A	=
Plan B	=
Account C	=
IRA D	=
Company E	=
Financial Advisor F	=
Financial Advisor G	=
Company H	=
Financial Institution I	=
Amount 1	=
Amount 2	=
Amount 3	=

Dear :

This is in response to your request dated December 27, 2017, as supplemented by correspondence dated March 6, 2018, and March 30, 2018, in which you request, through your authorized representative, 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 your ruling request.

Taxpayer A represents that he received a stock distribution from Plan B equal to Amount 2. Taxpayer A asserts that the failure to accomplish a rollover of Amount 3, a portion of the total stock distribution amount, within the 60-day period described in section 402(c)(3)(A) of the Code, was due to incorrect information received from his financial advisors.

Taxpayer A participated in Plan B, a 401(k) plan that was maintained by his employer, Company E. After Taxpayer A retired from Company E in , he met with his financial advisors, Financial Advisor F and Financial Advisor G of Company H, to prepare a financial plan for Taxpayer A's retirement. After reviewing the assets in Taxpayer A's Plan B account, which consisted of stock, cash, and an outstanding loan, Financial Advisors F and G suggested that Taxpayer A roll over the cash portion of his account in Plan B to an IRA, and that he receive a distribution of the shares of stock to take advantage of the tax exclusion of net unrealized appreciation (NUA). On January 28, , Taxpayer A and his financial advisors also spoke with a benefits representative of Company E regarding the distribution of the stock. The benefits representative appeared to be familiar with the exclusion for NUA and indicated that the stock certificates would be sent directly to Taxpayer A's residence.

On February 3, , Taxpayer A directly rolled over Amount 1, the cash portion of his account in Plan B, into IRA D. On April 20, , Taxpayer A contacted Plan B to inquire about the status of the distribution of Company E stock. Taxpayer A learned that on April 19, , stock equal to Amount 2 had been deposited into a non-IRA bank account of Taxpayer A. On May 13, , Taxpayer A transferred Amount 2 to Account C, a non-IRA account maintained by Financial Institution I. In and , Taxpayer A sold some of the shares of stock. The remaining shares, equal to Amount 3, have been retained in Account C.

In early , Taxpayer A received a Form 1099-R from Plan B showing that the entire stock distribution was taxable. After inquiring further, Taxpayer A learned that because of a deemed loan distribution from Plan B, NUA treatment was unavailable and the distribution of the shares of stock from Plan B was fully taxable. Had Taxpayer A been informed that NUA was not available, he would have rolled over the stock distributed from Plan B into IRA D.

Based on the above facts and representations, Taxpayer A requests a waiver of the 60-day rollover requirement under section 402(c)(3) of the Code with respect to the distribution of Amount 3 from Plan B.

With respect to your ruling request, 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) 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)). The preceding sentence does not apply to the distribution to the extent that such portion is transferred to an eligible retirement plan described in section 402(c)(8)(B)(i) and (ii).

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)(B) 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(e)(4)(A) of the Code provides that in the case of a distribution other than a lump sum distribution, the amount actually distributed to a distributee from a trust described in section 401(a) which is exempt from tax under section 501(a) shall not include any net unrealized appreciation in employer securities attributable to amounts contributed by the employee.

Section 402(e)(4)(B) of the Code provides that in the case of a lump sum distribution which includes employer securities, there shall be excluded from gross income the net unrealized appreciation attributable to the part of the distribution that consists of employer securities.

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 the failure to accomplish a rollover of Amount 3, a portion of the total stock distribution amount, within the 60-day period described in section 402(c)(3)(A) of the Code, was due to incorrect information received from his financial advisors.

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 3. Provided all other requirements of section 402(c)(3), except the 60-day requirement, will be met with respect to the contribution of Amount 3 to an IRA, Amount 3 will be considered a rollover contribution within the meaning of section 402(c)(3).

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, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
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Cc: