

INTERNAL REVENUE SERVICE

200602047

OCT 18 2005

Uniform issue list: 402-00-00

SE. T. EP. RA. T3

Legend:

Taxpayer A =  
Amount D =  
Amount E =  
Amount F =  
I R A X =  
C P A T =  
Plan X =

Dear [REDACTED]

This is in response to the February 11, 2005, letter 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) 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 she received a distribution from Plan X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to Taxpayer A's mental condition which impaired her ability to make financial decisions during the 60-day period.

As part of a divorce settlement, Taxpayer A was entitled to receive Amount D from her former husband's qualified retirement plan, Plan X. On March 31, [REDACTED] Taxpayer A received a check for Amount E which represented the total amount due taxpayer, Amount D, less withholding of Amount F. Taxpayer A intended to deposit Amount D into a rollover Individual Retirement Account ("IRA"), set up and maintained in her name as documented by a letter from Taxpayer A's attorney dated April 4, 2004, to the Plan X administrator returning the Amount E check and requesting that Amount D be directly rolled over into another IRA. By letter dated May 17, [REDACTED] Plan X administrator refused to do so and sent a replacement check for Amount E to Taxpayer A. However, the rollover was not completed until September 29, [REDACTED] when CPA T, while preparing Taxpayer A's tax returns discovered the uncashed check from Plan X and arranged the September 29, [REDACTED] rollover to IRA X.

During both the initial 60 day rollover period and afterward Taxpayer A suffered from clinical depression, was suicidal and committed at least one act of self-mutilation. Further, Taxpayer was confined to a local mental medical facility at least four times during the period in question and was committed for 24-hour psychiatric ward monitoring both during and after the initial 60 day rollover period.

Based on the 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 D contained in section 402(c)(3) of the Code in this instance.

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 (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 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) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) 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 on behalf of Taxpayer A is consistent with her assertion that her failure to timely accomplish a rollover of Amount D was due to Taxpayer A's mental condition which resulted in several periods of in-patient monitoring in hospital psychiatric wards and which impacted her judgment and ability to make financial decisions

Thus, based on the above, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover period found in Code section 402(c)(3)(A). As a result, the Service will treat Taxpayer A's September 29, 2004, rollover contribution of Amount D into IRA X as a valid rollover within the meaning of Code section 402(c).

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.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact [REDACTED] I.D. [REDACTED] at [REDACTED]. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

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