



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200614027

JAN 10 2006

Uniform Issue List: 402.00-00

SE:T:EP:RA:TI

Legend:

Taxpayer A =

Corporation B =

Plan C =

Plan C Account D =

Bank E =

Account F =

Amount G =

Amount H =

Amount I =

Dear :

This letter is in response to a request for a letter ruling dated August 22, 2005, as supplemented by additional information dated October 20, 2005, and December 7, 2005, from your authorized representative, in which you have applied for 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, age 69, represents that he received a distribution from Plan C totaling Amount G. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to a mistake made by Bank E.

Taxpayer A was a sole shareholder of Corporation B. Corporation B maintained Plan C, a prototype profit sharing plan. Taxpayer A was the sole remaining participant in Plan C. In _____ Taxpayer A decided to terminate Corporation B and Plan C. Plan C's assets were maintained by four different financial institutions. Taxpayer A represents that he contacted each institution with the intent to rollover his account balances in Plan C into four separate individual retirement arrangements ("IRA") under Code section 408(a). Three of the four financial institutions correctly followed Taxpayer A's instructions to rollover his account balance in Plan C to an IRA. However, on December 2, 2003, Bank E inadvertently transferred Amount G from Plan C Account D to a non-IRA account, Account F. The mistake was discovered upon receipt of a Form 1099-INT in _____. On _____ Taxpayer A withdrew Amount H from Account F for retirement purposes, believing it was a distribution from an IRA. Taxpayer A represents that the remainder of Account G (Amount I) has not been used for any other purpose.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in Code section 402(c)(3) with respect to the distribution of Amount I (Amount G – Amount H).

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 the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to a mistake made by Bank E.

Therefore, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount I (Amount G – Amount H) from Plan C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount I into a Rollover IRA. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, Amount I will be considered a rollover contribution within the meaning of section 402(c)(3).

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.

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A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact _____, SE:T:EP:RA:T1, I.D. _____ at _____

Sincerely yours,

Carlton A. Wathen

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: