



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

JUL 28 2010

201042043

Uniform Issue List: 402.00-00

SE: T: EP: RA: T1

Legend:

Taxpayer A =  
Medical Practice B =  
Plan C =  
  
Financial Institution D =  
Account E =  
Financial Institution F =  
Individual G =  
Company H =  
Amount 1 =  
Amount 2 =

Dear :

This letter is in response to a request for a letter ruling dated May 13, 2010, as supplemented by additional information dated June 22, 2010, from 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 ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A was age 69 at the time of the distribution of Amount 1 from Plan C. Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error by a financial institution. Amount 1 remains in Account E and has not been used for any purpose.

Taxpayer A is a physician employed by Medical Practice B. He participates in Plan C, a profit sharing plan with a cash or deferred arrangement under section 401(k) of the Code for which the plan assets are invested with Financial Institution D. Under the terms of Plan C, a participant may take an in-service distribution after attaining age 59½. On March 17, 2009, Taxpayer A completed and submitted a form to the plan administrator of Plan C requesting an in-service distribution of Amount 1. On the distribution form, Taxpayer A elected a direct rollover to what he understood to be an individual retirement account (IRA) with Financial Institution F.

Prior to completing the form requesting a distribution of Amount 1, Taxpayer A and his personal tax advisor (Individual G of Company H) conducted a telephone conference with a representative of Financial Institution F. He advised that Taxpayer A could open an IRA with Financial Institution F and invest in certificates of deposit. Soon thereafter, Taxpayer A went on-line to open Account E which he believed was an IRA. On April 13, 2009, a check totaling Amount 1 was sent directly to Financial Institution F. The check was made payable to Taxpayer A's IRA Rollover Account E. On April 29, 2009, Taxpayer A received a letter from Financial Institution F acknowledging the opening of Account E and the purchase of a certificate of deposit totaling Amount 1. On July 21, 2009, Taxpayer A received a check totaling Amount 2, representing interest earned on the certificate of deposit in Account E. Taxpayer understood Account E to be an IRA and was confused by the check. He and Individual G contacted Financial Institution F and were advised that it did not offer rollover IRAs and that Account E was a non-IRA account. Financial Institution F did not follow Taxpayer A's written instruction on the check totaling Amount 1 that it be deposited into an IRA as a direct rollover. Documentation submitted (Election Distribution Form and Distribution check) clearly indicate Taxpayer A's intent to complete a direct rollover.

Based on the above facts and representations, you request 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 Amount 1.

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) of the Code 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 section 402(c) of the Code 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) 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 sections 408(d)(3)(I) and 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 presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was caused by Financial Institution F's not complying with his written instructions to deposit Amount 1 in an IRA.

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 from Plan C and Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 into 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, Amount 1 will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

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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 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 (I.D. # ), , at ( ) .

Sincerely yours,

*Carlton A. Waters*

Manager  
Employee Plans Technical Group 1

cc:

Enclosures:

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