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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201452025

SEP 30 2014

SE:T:EP:RA:T3

U.I.L. 402.08-00

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Legend:

| | |
|---|---|
| Taxpayer A | = xxxxxxxxxxxxx |
| Plan X | = xxxxxxxxxxxxxx |
| IRA Y | = xxxxxxxxxxxxxx |
| Individual B | = xxxxxxxxxxxxxx |
| Individual C | = xxxxxxxxxxxxxx |
| Corporation C | = xxxxxxxxxxxxxx |
| Amount D | = xxxxxxxxxxxxxx |
| Company Z | = xxxxxxxxxxxxxx |

Dear xxxxxxxxxx:

This letter is in response to your request dated May 18, 2014, as supplemented by correspondence dated July 8, 2014,and September 5, 2014, 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 he received a distribution from Plan X totaling Amount D with the intent to make a direct rollover into a Roth IRA. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to errors made by Individuals B and C of Company Z.

On February 23, 2011, Taxpayer A opened a Roth 401(k) account in Plan X through his employer Corporation C. Taxpayer A's employment with Corporation C ended in November 2011 and in December 2011, Taxpayer A contacted Individual B. Individual B informed Taxpayer A that he could open a Roth IRA with Company Z and rollover the Roth 401(k) assets in Plan X. Individual B prepared the paperwork for the rollover on his personal computer, and completed the transaction by telephone with Individual C of Company Z.

On December 27, 2011, the custodian of Plan X issued a distribution check in the amount of Amount D and sent it directly to Company Z. Company Z deposited Amount D into IRA Y and not into a Roth IRA as Taxpayer A intended.

On February 6, 2014, Taxpayer A first became aware that Amount D was not rolled over into a Roth IRA when he sought to transfer the assets in IRA Y to another brokerage firm.

Based on the foregoing facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Amount D.

Section 402(c)(1) 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 included 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.

Section 402(c)(8)(B) of the Code provides that an eligible retirement plan includes (i) an eligible retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an 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) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 402(c)(8) of the Code further provides that if any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

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) 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 that the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 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.

Section 408A(c)(6) of the Code provides that no rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

Section 408(e)(1)(B) of the Code defines, in relevant part, a qualified rollover contribution from an eligible retirement plan to a Roth IRA from another such account, but only if, in the case of an eligible retirement plan (as defined in section 402(c)(8)(B), other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c).

Section 408(e)(1)(B)(ii) of the Code makes the rollover requirements of section 402(c) applicable to distributions from an eligible retirement plan paid into a Roth IRA.

Rev. Proc. 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), 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 by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to an error committed by Individuals B and C of Company Z which caused the amount attributable to Taxpayer A's Roth 401(k) account to be deposited in a traditional IRA which was not an eligible retirement plan with respect to the distribution.

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 D from Plan X.

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

No opinion is expressed as to the tax treatment of the transactions 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.

If you have any questions concerning this letter, please contact xxxxxxxxxxxx, at xxxxxxxxxxxxxxxxxxxxxxxxxxx All correspondence should be addressed to SE:T EP RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

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