



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

SEP 09 2015

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Uniform Issue List: 402.00-00

SE: T: EP: RA: TI

Legend:

Taxpayer A =

Plan B =

Plan C =

Financial Institution D =

State E =

Account F =

Financial Institution G =

State H =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Dear :

This is in response to your request dated May 18, 2015, as supplemented by correspondence dated June 18, 2015, 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 distributions equal to Amount 1 and Amount 2 from Plan B and Plan C, respectively. 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 manage her financial affairs. Taxpayer A further represents that Amount 1 and Amount 2 have not been used for any other purpose.

Taxpayer A was employed by State E. She participated in Plan B and Plan C, both qualified under section 401(a) of the Code and maintained by Financial Institution D. In late 2013, Taxpayer A decided to retire. Her retirement preparations included having to complete several documents given to her by State E's retirement division. Among these, were forms to request distributions from Plan B and Plan C. On February 5, 2014, a distribution of Amount 1 was made from Plan B. On February 6, 2014, a distribution of Amount 2 was made from Plan C. Taxes totaling Amount 3 were withheld from the two distributions. The 2 distributions, minus taxes withheld, totaling Amount 4, were directly transferred to Account F, a nonretirement savings account with Financial Institution G. Taxpayer A's required minimum distribution for 2014 was Amount 5. The total of the two distributions, less Taxpayer's required minimum distribution for 2014 was Amount 6.

Taxpayer A was age 75 at the time of her retirement living alone in State E. English was not her first language and, while alive, her husband handled the financial affairs. Taxpayer A requested help in completing the forms but was told by the plan administrators that they were not allowed to counsel or give any tax advice. Soon after receiving the distributions, Taxpayer A moved to State H to live with her daughter. Her daughter as well as her physician in State E indicate that Taxpayer A suffers from physical and cognitive disabilities, the consequences of which were diminished mental capacity and forgetfulness. The request is accompanied by a letter from a physician stating that Taxpayer A has difficulty making simple decisions and is, in general, incapable of managing her financial affairs.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount 6.

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)(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).

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)-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.

Revenue Procedure 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 her assertion that her failure to accomplish a timely rollover of

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Amount 6 was due to her deteriorating mental condition, which impaired Taxpayer A's ability to manage her financial affairs during the 60-day rollover period.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to distributions totaling Amount 6 from Plan B and Plan C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to transfer an amount not to exceed Amount 6 into a rollover IRA. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 402(c) of the Code.

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.

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 or () .

Sincerely yours,

Carlton A. Wathens

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: