



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200634064

Uniform Issue List: 402.00-00

SE:T:EP:RA:T1

APR - 5 2006

Legend:

Taxpayer A =

Employer B =

Country C =

Plan D =

Financial Institution E =

Account F =

Amount 1 =

Dear :

This letter is in response to a request for a letter ruling dated December 15, 2005, as supplemented by additional correspondence dated February 21, 2006, 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, age 50, represents that he received a distribution from Plan D totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to confusion caused when his spouse, acting on his behalf, attempted to transfer the account balance in Plan D to a Rollover IRA utilizing Financial Institution E's online website which led to Amount 1 being deposited in a non-IRA account. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that in April of 2005, he resigned from Employer B and became employed by a company in Country C in May 2005. Contemplating a direct rollover from Plan D, Taxpayer A instructed his spouse to establish a roll-over retirement account with Financial Institution E. On June 27, 2005, Taxpayer A's spouse went on Financial Institution E's website with the intention of establishing an IRA in Taxpayer A's name. However, due to the confusing nature of the online instructions, Taxpayer A's spouse established an "individual account", Account F, which was not an IRA account. On June 28, 2005, Taxpayer A sent the account manager of Plan C a form requesting a direct rollover of his benefit to Account F, believing Account F was an IRA. On August 1, 2005, Amount 1 was transferred to Account F with Financial Institution E. The mistake was discovered in November, 2005, when Taxpayer A's spouse invested the assets of Account F in several bond funds and subsequently noticed that the account statement did not contain an IRA designation.

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 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) 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 caused by his being in County C and his spouse’s confusion when attempting to open a rollover IRA account utilizing the online website of Financial Institution E.

Therefore, pursuant to Code section 402(c)(3), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 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 1 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.

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. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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