

200628027



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 19 2006

SE: T: EP: RAITI

Uniform Issue List: 402.00-00

Legend:

Taxpayer A =

Company B =

Custodian C =

Amount 1 =

Plan X =

Account Y =

Dear

This is in response to your request dated March 9, 2005, as supplemented by correspondence dated December 25, 2005, 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, age 73, represents that he received a distribution from Plan X totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover to an individual retirement arrangement ("IRA") within the 60-day period prescribed by Code section 402(c)(3) was due to the confusing nature of Custodian C's on-line "New Account Registration" web page, and the failure of Custodian C to recognize Taxpayer

A's direct rollover from Plan X, which led to Amount 1 being placed into a non-IRA account. Taxpayer A further represents that Amount 1 has not been used for any purpose.

Taxpayer A represents that, prior to his retirement, he participated in Plan X as an employee of Company B. On July 24, 2003, Company B's benefits manager notified Taxpayer A that, under the Plan's terms, he had to transfer his retirement funds from Plan X to another eligible retirement plan. On September 24, 2003, Taxpayer A completed an on-line application with Custodian C to establish what he believed was an IRA. In fact, Account Y was a non-IRA "individual account." On October 6, 2003, Taxpayer A completed a form electing a direct rollover from Plan X to a traditional IRA and indicated Account Y as the recipient IRA. By check dated October 10, 2003, Plan X transmitted Amount 1 to Custodian C, which was deposited into Account Y, a non-IRA account.

On December 7, 2004, Taxpayer A, having attained age 70½, contacted Custodian C to inquire about mandatory distributions for 2004 that might be required from Account Y. On December 8, 2004, Custodian C informed Taxpayer A that Account Y was not an IRA; and, on December 30, Custodian C informed Taxpayer A that it was not possible to change Account Y from an individual to an IRA account. Documentation submitted by Taxpayer A indicates that Custodian C has changed its on-line "New Account Registration" web page to no longer default to an "Individual Account" screen and added "Non-Retirement" to the "Individual" and "Joint Tenants" selections.

Based on the facts and representations, you request a ruling under the terms of section 402(c)(3) of the Code that the Internal Revenue Service waive the 60-day rollover requirement 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)(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) 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 documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the confusing nature of Custodian C's on-line web page and Custodian C's failure to recognize the distribution of Amount 1 as a "direct rollover" from Plan X.

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 X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1, less required minimum distributions for 2004 and 2005, 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, less required minimum distributions for 2004 and 2005, will be considered a rollover contribution within the meaning of section 402(c)(3) 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.

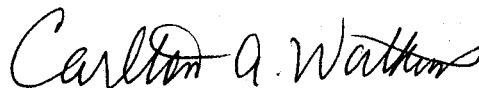
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

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 wish to inquire about this ruling, please contact
correspondence to SE:T:EP:RA:T1.

Please address all

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice 437, Notice of Intention to Disclose