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Private Letter Rulings & Technical Advice Memoranda (1950 to Present)

Advance PLR/TAM

PLR 201204025 -- IRC Sec(s). 402, 1/27/2012 **ADVANCE**

Private Letter Rulings

Private Letter Ruling 201204025, 1/27/2012, IRC Sec(s). 402

UIL No. 402.00-00

IRAs—waiver of rollover requirement—oversight by financial institution; erroneous advice from tax advisor.

Headnote:

Pursuant to Code Sec. 402(c)(3)(B); , IRS waived 60-day rollover requirement where taxpayer's failure to timely roll over funds was due to oversight by financial institution and his reliance on erroneous advice provided by financial advisor. And, because 2 stated amounts had already been contributed to IRA, and provided all other requirements of Code Sec. 402(c)(3); were met, taxpayer was granted 60-day extension from date this letter was issued to contribute third amount to IRA, whereupon all 3 amounts would be considered rollover under Code Sec. 402(c)(3); .

Reference(s): Code Sec. 402;

Full Text:

201204025

NOV 01 2011

Uniform Issue List: 402.00-00

Legend:

Taxpayer A

Company B

Plan C

Financial Institution D

County E

Financial Institution F

IRA X

Amount 1

Amount 2

Amount 3

Amount 4

Amount 5

Amount 6 distribution check into IRA X, Taxpayer A was following the same incorrect tax advice with respect to the timing of the deposit of the refund check into IRA X.

On , Taxpayer A received a notice from the Internal Revenue

Service ("Service") stating that Amount 4 was taxable income for the **** tax year based on the position that Taxpayer A had not completed a rollover of the distribution within the 60-day time requirement. Taxpayer A represents that this was the first time he learned that Amounts 1 and 5 had not been deposited into IRA X in a timely manner.

In a letter dated , from the Service, Taxpayer A was informed that he would have to request a letter ruling, pursuant to Revenue Procedure 200316, in order to receive a waiver of the 60-day rollover period.

Based on the above facts and representations, Taxpayer A has requested a ruling that the Service waive the 60-day rollover requirement contained in [section 402\(c\)\(3\)](#) of the Code with respect to the gross distribution of Amount 4 from

Plan C.

[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 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\(c\)\(3\)\(B\)](#) 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 documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due both to the failure of Plan C, or Company B, or Financial Institution

D to provide proper written notice regarding the rollover rules as required by [section 402\(f\)](#) of the Code, and to the incorrect information Taxpayer A received from his tax advisor. Therefore, pursuant to [section 402\(c\)\(3\)\(B\)](#) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the gross distribution of

Amount 4 from Plan C. Noting that Amounts 1 and 5 have already been contributed to

IRA X and provided all other requirements of [section 402\(c\)\(3\)](#) of the Code, except the 60-day requirement, are met, Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute to IRA X Amount 6 (Amount 4 less the sum of Amount 1 and Amount 5), and the total of Amounts 1, 5, and 6 (equaling Amount 4) 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 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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact (Identification

Please address all correspondence to SE:T:EP:RA:TI.

Sincerely yours,

Carlton A. Watkins, Manager

Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

CC: