

Private Letter Ruling  
Number: **201233022**  
Internal Revenue Service  
May 25, 2012

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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

MAY 25 2012

Uniform Issue List: 402.00-00

T:EP:RA:T3

Dear \*\*\*\*\*:

This letter is in response to your request dated September 6, 2011, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code (Code) with respect to Decedent A. Correspondence dated October 14, 2011, October 20, 2011, October 24, 2011, February 17, 2012, March 8, 2012, and March 28, 2012, supplemented the request. You are the personal representative of the estate of Decedent A.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

You represent that Decedent A attempted to execute a rollover of Amount A to her IRA by means of a trustee to trustee transfer, prior to her death at age 64, but that the transfer was not completed and the subsequent distribution of Amount A was not timely rolled over to an IRA. You assert that this failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3)(B) was due to an error made by Financial Institution M, resulting in the rollover amount being transferred to Account Y, a nonqualified account. You further represent that Amount A has remained in Account Y and has not been used for any other purpose.

Decedent A participated in Plan X, which was maintained by Company N. On Date 1, Decedent A elected to transfer a lump sum distribution of Amount A to her IRA at Financial Institution M, effective on Date 2, the date of her retirement. She requested that Financial Institution M provide the account number for the trustee to trustee transfer, but Financial Institution M provided the account number for Account Y instead of for the IRA. On Date 3, Decedent A died. Company N, on learning of Decedent A's death, stopped payment of the transfer of Amount A.

On Date 4, following efforts by Decedent A's representative to effect the transfer, Plan X issued a check in Amount A payable to Financial Institution M for the benefit of (F/B/O) Decedent A. Unbeknownst to Individual B, the personal representative of Decedent A, Decedent A had been given an incorrect account number by a representative of Financial Institution M at

the time the transfer was elected, and the error had not been caught or corrected. As a result, Amount A was transferred to Account Y, a nonqualified account, where it remains.

Official I, an officer of Financial Institution M, provided a statement under penalty of perjury that Financial Institution M accepts full responsibility for failing to directly roll over Decedent A's pension distribution to Decedent A's IRA as Decedent A had instructed. Decedent A's IRA X was open on Date 1, the date of her election, and on Date 4, the date of the actual distribution. However, it was subsequently closed by Financial Institution M for lack of assets on Date 5.

Documentation also shows that in 2009, Decedent A received a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing a Plan X distribution to Taxpayer A with respect to 2009 for Amount A. Box 7 (Distribution Code(s)) of the Form 1099-R was coded "G" indicating a "Direct Rollover" to a qualified plan.

You represent that under state law you, as the Personal Representative of the estate of Decedent A, have the authority to establish a qualified rollover IRA on behalf of Decedent A.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount A from Plan X.

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Section 402(c)(1) of the Code provides that if any portion of an eligible rollover distribution from a qualified trust is paid to the employee in an eligible rollover distribution and the employee 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) 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)-1, Q&A-15, of the Income Tax Regulations (Regulations) 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 you is consistent with your assertion that the failure to accomplish a timely rollover in this case was caused by errors made by Financial Institution M, which resulted in Amount A being deposited into Account Y, a nonqualified account.

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 A from Plan X. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A 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, the contribution of Amount A into an IRA will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

However, it is noted that, to the extent that you, as personal representative, name a beneficiary of the IRA, section 1.401(a)(9)-4, Q&A-4, of the Regulations provides that a designated beneficiary must be a beneficiary as of the date of death. The Service will not treat any beneficiary named by you, as personal representative, as a designated beneficiary under section 401(a)(9). Thus, for purposes of section 401(a)(9), the rollover IRA will have no designated beneficiary.

This ruling assumes Plan X satisfied the qualification requirements of section 401(a) of the Code at all times relevant to this transaction.

Finally, the scope of the personal representative's powers is a matter of state law. This ruling assumes that your actions in contributing Amount A into an IRA, set up in Decedent A's name, is in accordance with the laws of State C and pursuant to your authority as personal representative of the estate.

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 is being 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 \*\*\*\*\* at \*\*\*\*\* . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

Laura B. Warshawsky, Manager  
Employee Plans, Technical Group 3

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

CC: