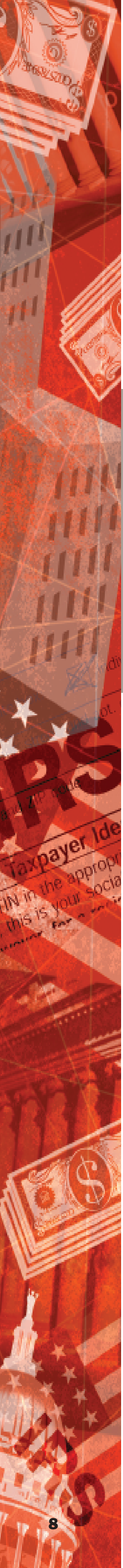
Anthony P. Curatola, Editor



60-Day IRA Rollover Waiver Rule

Over the past 10 years, the IRS has provided more than 1,000 private letter rulings to taxpayers who had transactions that didn't qualify for an automatic waiver. The common theme to each ruling is the taxpayer's meticulous response to each provision of the waiver requirements.

In general, a person has 60 days to transfer funds from one IRA to another IRA every 365 days. Beginning in 2002, the IRS was granted the authority by legislation to waive or relax the 60-day IRA rollover rule under certain circumstances. The IRS provided guidance to taxpayers regarding the kinds of situations that would automatically qualify for a waiver as well as guidance on when a private letter ruling (PLR) would be necessary. This article reviews the basic waiver rules and then looks at some PLRs for and against the taxpayer. Although one might conclude that the IRS has been lenient in granting waivers, the one fact that stands out in the approved PLRs is that the taxpayers clearly demonstrated their compliance with each required provision of the requested waiver.

Basic Waiver Rules

The IRS has provided guidance to waving the 60-day rollover for distributions that have occurred *after* December 31, 2001. Specifically, Revenue Procedure 2003-16 (January 8, 2003) provides that the 60-day rollover requirement is *waived automatically* only if:

- The financial institution receives the funds on behalf of the taxpayer before the end of the 60-day rollover period,
- The taxpayer follows *all* the procedures set by the financial institution for depositing the funds into an eligible retirement plan within the 60-day period (including giving instructions to deposit the funds into an eligible retirement plan),
- The funds aren't deposited into an eligible retirement plan within the 60-day rollover period *solely* because of an error on the part of the financial institution,
- The funds are deposited into an eligible retirement plan within one year from the beginning of the 60-day rollover period, and
- It would have been a valid rollover if the financial institution had deposited the funds as instructed.

If these conditions apply to the taxpayer's situation, then the 60-day time limit is automatically waived in the eyes of the IRS and no PLR is necessary. If the taxpayer's situation doesn't fall under the automatic waiver, the taxpayer may want to consider applying for a letter ruling from the IRS.

Revenue Procedure 2007-4, 2007-1 IRB 118 (January 2, 2007) provides the procedures for requesting a PLR in the case of a 60-day rollover violation. The ruling states that the IRS will consider all relevant facts and circumstances in determining whether to grant a waiver, including:

- Whether errors were made by the financial institution (other than those described under automatic waiver);
- Whether the taxpayer was unable to complete the rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error;
- Whether the taxpayer used the amount distributed; and
- How much time has passed since the date of distribution.

The fee for requesting a PLR since February 1, 2006, through 2012 (Rev. Proc. 2012-8, 2012-1 IRB 235 (January 3, 2012)) is:

- $500 for a rollover less than $50,000,
- $1,500 for a rollover equal to or greater than $50,000 and less than $100,000, or

- $3,000 for a rollover equal to or greater than $100,000.

Private Letter Rulings

There have been more than 1,000 PLR requests by taxpayers in this area over the past 10 years to waive the strict enforcement of the rule. For example, PLR 201216047 (January 27, 2012) approved a waiver to a taxpayer who wasn't notified by her deceased spouse's company that she was able to roll over the proceeds from the two company-sponsored plans. The interesting part of this ruling is that the deceased spouse was self-employed and, as the employer of the company, was the plan administrator. Correspondence from the company, which was sent to the surviving spouse, stated that, in order to receive a distribution of the plan funds that were transferred into Accounts B and C, she should send a letter to the company requesting a transfer of the balance in the accounts to her personal account, which she did. But the correspondence from the company contained no information regarding her ability to roll over the distributions into IRAs. Moreover, the company didn't provide her with any forms regarding the transfer of assets and didn't request that she sign a waiver for income tax withholding. Hence, the deceased spouse (unavailable for comment) failed to provide adequate information. The IRS granted a waiver.

PLR 200523031 (March 18, 2005) granted a waiver to a taxpayer who attempted to reinvest two distributions within the 60-day period. A note on the check showed that the amount represented a reinvestment of the distributions on August 6 and August 10, 2004, and included the IRA account number into which the check proceeds should be deposited. The taxpayer mailed the check but failed to include the company's suite number in the address, and it was returned. On the second attempt, the taxpayer forgot to endorse the check. The rollover was finalized, but after the 60-day period.

PLR 201134025 and 201134026 (August 29, 2011) were both granted by the IRS. In the first ruling, the taxpayer deposited rollover funds into an account with Financial Institution C for a short time before moving the amount into what he believed was an IRA with Financial Institution B. The following year, Financial Institution B notified the taxpayer that his financial advisor had lost her registration with the financial institution. The taxpayer also learned that the advisor had deposited the amount into her own personal account, and not into the taxpayer's IRA, and that the statements over the past year purported to have come from his IRA were forgeries.

In the second ruling, the taxpayer was told by the financial institution's representative to hold the check and to come back at a later date when the interest rates offered would be better. The taxpayer relied on his advice, returned again within the 60-day period, and was told that the rates would increase soon and to come back at a later date. The taxpayer returned three times within the 60-day period and was told each time to try again later.

PLR 2011013 and 2011014 (August 1, 2011) resulted in a split decision by the IRS. In the first ruling, the taxpayer asserted that his failure, at the age of 81, to accomplish a rollover of the distribution from his IRA within the 60-day period was due to his depressed condition following his separation from his spouse, which adversely impacted his ability to manage his financial affairs. The amount remained in his account and hadn't been used for any purpose. The IRS granted an extension of time.

In the second ruling, the taxpayer stated that he withdrew funds from his IRA and asserted that his failure to accomplish a rollover within the 60-day period was due to financial difficulties involving the loss of his job, a fire in his home, a pending move, the downturn in the economy, and the decline in the value of his retirement funds. In this case, the taxpayer utilized some of the proceeds from the IRA until he received an insurance settlement on his home. The IRS concluded the circumstances don't justify a waiver of the 60-day rollover rule.

In PLR 201218040 (February 8, 2012), a taxpayer was denied a waiver that was requested as a result of his physical condition, which he contended interfered with the management of his financial affairs. The taxpayer withdrew amounts from his SEP-IRA for use in a real estate investment. The taxpayer indicated he had lost much of his retirement savings from 2007 through 2009 and wanted to use his retirement assets to purchase

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foreclosed homes to renovate and resell. After investing the amount with a company, the taxpayer attempted to find an IRA trustee that invested in foreclosed homes but was unable to identify one. In addition, he argued that his physical and mental health made it impossible for him to perform all the tasks necessary to learn about and comply with the rules for distributions from IRAs. A reading of the facts indicates that the taxpayer didn't present evidence to show he had satisfied the waiver rules. The request was denied.

In PLR 201212021 (December 27, 2011), the IRS ruled that a surviving spouse was entitled to roll over or do a trustee-to-trustee transfer of the decedent's interest in the IRA even though it first passes to the decedent's estate and then is distributed to the surviving spouse. The general rule is if the proceeds of a decedent IRA pass through a third party (i.e., trust or an estate), the surviving spouse generally isn't eligible to roll over the distributed proceeds from the decedent's IRA into his or her own IRA. In this case, however, the surviving spouse was both the executor of the estate and its sole beneficiary with the rights to direct any and all amounts from the estate without restriction.

The majority of PLRs issued over the past few years have been approved by the IRS. It's important to note that in nearly every request the taxpayer clearly supported his or her compliance with the waiver provisions. The majority of the requests are based on the omission of information given to taxpayers, errors in complying with the taxpayer's IRA rollover intent, and medical issues. These results suggest that tax advisors need to carefully follow up on such transactions for their clients to ensure the transactions are completed in a timely fashion by the financial institutions involved. Otherwise, the clients may be subject to the financial cost and aggravation of a PLR filing. Likewise, company representatives need to ensure that their organization provides quality information to their departing employees and their surviving spouses who may not be as financially savvy when funds are removed from qualified company plans. **SF**

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