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IRS Announces New Waiver Procedure for Taxpayers Who Inadvertently Miss the 60-day Rollover Deadline

Remember, you can make only one tax-free, 60-day, rollover from any IRA you own (traditional or Roth) to any other IRA you own in any 12-month period. This limit does not apply to direct rollovers or trustee-to-trustee transfers (or to Roth IRA conversions).

Also keep in mind that you can generally leave your funds in a 401(k) or similar plan (at least until the plan's normal retirement age) if your vested account balance at the time you terminate employment exceeds $5,000.

Background--direct and indirect (60-day) rollovers

If you're eligible to receive a taxable distribution from an employer-sponsored retirement plan (like a 401(k)) you can avoid current taxation by *directly* rolling the distribution over to another employer plan or IRA (with a direct rollover you never actually receive the funds). You can also avoid current taxation by actually receiving the distribution from the plan, and then rolling it over to another employer plan or IRA within 60 days following receipt (a "60-day" or "indirect" rollover). But if you choose to receive the funds instead of making a direct rollover the plan must withhold 20 percent of the taxable portion of your distribution, even if you *intend* to make a 60-day rollover. (You'll need to make up those withheld funds from your other assets if you want to roll over the entire amount of your plan distribution.)

Similarly, if you're eligible to receive a taxable distribution from an IRA, you can avoid current taxation by either transferring the funds directly to another IRA or to an employer plan that accepts rollovers (sometimes called a "trustee-to-trustee transfer"), or by taking the distribution and making a 60-day indirect rollover (20% withholding doesn't apply to IRA distributions).

Under recently revised IRS rules you can make only one tax-free, 60-day, rollover from any IRA you own (traditional or Roth) to any other IRA you own in any 12-month period. However, this limit does *not* apply to direct rollovers or trustee-to-trustee transfers (or to Roth IRA conversions). Because of the 20% withholding rule, the one-rollover-per-year rule, and the possibility of missing the 60-day deadline, in almost all cases you're better off making a direct rollover or trustee-to-trustee transfer to move your retirement plan funds from one account to another.

Exceptions to the 60-day rollover deadline

But what happens if you do receive an actual distribution from your employer plan or IRA and you want to roll over the funds, but you've missed the 60 day deadline? There are limited statutory exceptions to the 60-day rule. For example, the time for making a rollover may be extended for those serving in a combat zone or in the event of a presidentially declared disaster or a terrorist or military action.

But the IRS also has the authority to waive the 60-day limit "where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the [individual's] reasonable control." To seek a waiver you previously had to request a private letter ruling from the IRS. However, the IRS has just announced (in Revenue Procedure 2016-47) a simpler alternative to seeking a private letter ruling.

The new waiver alternative: "self-certification"

Under the new procedure, if you want to make a rollover but the 60-day limit has expired, you can simply send a letter (the Revenue Procedure contains a sample) to the plan administrator or IRA trustee/custodian certifying that you missed the 60-day deadline due to one of the following 11 reasons:

1. The financial institution receiving the contribution, or making the distribution to which the contribution relates, made an error.
2. You misplaced and never cashed a distribution made in the form of a check.
3. Your distribution was deposited into and remained in an account that you mistakenly thought was an eligible retirement plan.

4. Your principal residence was severely damaged.
5. A member of your family died.
6. You or a member of your family was seriously ill.
7. You were incarcerated.
8. Restrictions were imposed by a foreign country.
9. A postal error occurred.
10. Your distribution was made on account of an IRS tax levy and the proceeds of the levy have been returned to you.
11. The party making the distribution delayed providing information that the receiving plan or IRA needed to complete the rollover, despite your reasonable efforts to obtain the information.

To qualify for this new procedure, you must make your rollover contribution to the employer plan or IRA as soon as practicable after the applicable reason(s) above no longer prevent you from doing so. In general, a rollover contribution made within 30 days is deemed to satisfy this requirement.

Effect of self-certification

It's important to understand that this new self-certification process is not an automatic waiver by the IRS of the 60-day rollover requirement. The self-certification simply allows you and the financial institution to treat and report the contribution as a valid rollover. However, if you're subsequently audited, the IRS can still review whether your contribution met the requirements for a waiver.

For example, the IRS may determine that the requirements for a waiver were not met because (1) you made a material misstatement in the self-certification, (2) the reason(s) you claimed for missing the 60-day deadline did not prevent you from completing the rollover within 60 days following receipt, or (3) you failed to make the contribution as soon as practicable after the reason(s) no longer prevented you from making the contribution. In that case, you may still be subject to additional income taxes and penalties. Because of this potential risk, some taxpayers may still prefer the certainty of a private letter ruling from the IRS waiving the 60-day deadline, despite the additional time and expense involved.
