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Volume 39 | Issue 96 | August 31, 2016

IRS Allows "Self-Service" 60-Day Rollover Waivers for Retirement Plan Distributions

If an indirect rollover does not occur within the required 60-day timeframe, IRS will now allow the affected individual to self-certify that they meet a "hardship waiver" exception to the 60-day rule in a broad array of circumstances. Plan administrators and IRA trustees can then rely on the self-certification in deciding whether to accept a rollover contribution after the 60-day period ends.

Background

Distributions that are eligible to be rolled over from qualified retirement plans, section 403(b) tax-sheltered annuities, section 457(b) governmental plans, and IRAs can be deposited to another eligible retirement plan — either via a direct rollover, or an indirect rollover — without the participant having to include the amount transferred in their gross income (assuming that the rollover is not from traditional pre-tax assets into a Roth IRA or Designated Roth Account). Direct rollovers allow the participant's entire balance to stay in the system; indirect rollovers are hampered by the income tax withholding rules because the individual needs to come up with the 20% withheld if they want the full benefit to stay in an eligible plan. Most participants opt for direct rollovers, but the 60-day rule is typically used when participants roll over outstanding loan balances.

Indirect rollovers must be completed within 60 days of receipt. The IRC provides a safety valve in the form of a hardship waiver when life events get in the way of meeting the 60-day deadline. Aside from situations that are eligible for automatic approval (such as delays up to one year caused by errors made by a financial institution, delays due to frozen deposits at a financial institution or in connection with combat zone service), individuals had to apply for an IRS letter ruling and pay an IRS user fee (currently $10,000) if they wanted to be sure they qualify for a waiver.

In 2015, the IRS user fee for letter rulings that requested a waiver of the 60-day rollover rule were much less than they are now and were based on the amount of the rollover. The 2015 user fee was $500 for rollovers less than $50,000; $1,500 for rollovers between $50,000 and $100,000; and $3,000 for rollovers of $100,000 or more. IRS Revenue Procedure 2016-08 announced that effective February 1, 2016, the special fees for these rollover waiver rulings would no longer apply and that the $10,000 fee applicable to most other IRS letter rulings will apply going forward. It is expected that with this new process and the higher IRS letter ruling fees, fewer distributees will be interested in pursuing a letter ruling.

Streamlining the Process with Self-Certification

In Revenue Procedure 2016-47, the IRS has created a simplified method for self-certifying the reason for a waiver. Eleven reasons are identified as acceptable hardships justifying the waiver. The individual identifies the reason applicable to their situation in a standardized letter that is provided to the plan administrator or IRA trustee and retained in the individual's tax records for production if requested on audit. The Revenue Procedure also contains a model "Certification for Late Rollover Contribution" form. The specific reasons justifying an automatic waiver that can be self-certified are:

1. An error was committed by the financial institution making the distribution or receiving the contribution.
2. The distribution was in the form of a check and the check was misplaced and never cashed.
3. The distribution was deposited into and remained in an account that the individual mistakenly thought was a retirement plan or IRA.
4. The individual's principal residence was severely damaged.
5. One of the individual's family members died.
6. The individual or a family member was seriously ill.
7. The individual was incarcerated.
8. Restrictions were imposed by a foreign country.
9. A postal error occurred.
10. The distribution was made on account of an IRS levy and the proceeds of the levy have been returned to the individual.
11. The party making the distribution delayed providing information that the receiving plan or IRA required to complete the rollover despite the individual's reasonable efforts to obtain the information.

A plan administrator or IRA trustee can rely on the self-certifications in determining whether an extension of the 60-day rollover period applies to the rollover, but is not required to do so.

This self-certification process is not necessary for the automatic waivers that apply in the case of certain errors by financial institutions (where the failure to deposit is the fault of the institution and the deposit is made within one year of the distribution), where delays are caused by frozen deposits at financial institutions, or where a combat or disaster relief waiver applies. These situations are covered in other IRS guidance.

Updated FAQs and Advice for Administrators

Additional information for individuals on waivers is provided by IRS **in FAQs** that have been updated to reflect this new option of self-certification. IRS has also updated their **collection of information** for retirement plan administrators and IRA trustees.

> **Comment.** This list should cover the vast majority of extenuating circumstances for missing the 60-day deadline and go far in helping to plug the "leakage" problem.

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Restrictions, Caveats, and Cautions

The new procedure includes a few modest conditions for using self-certification:

- The IRS must not have previously denied a waiver request for a rollover of all or part of the distribution.
- The contribution must be made to the plan or IRA as soon as practicable after the reason or reasons for the hardship no longer prevent the taxpayer from making the contribution. Completing the rollover within 30 days is deemed to satisfy this requirement.
- A plan administrator or an IRA trustee may not rely on the self-certification for other purposes or if the plan administrator or IRA trustee has actual knowledge that is contrary to the self-certification. For example, the certification does not relieve the plan administrator of their duty to determine whether the amount received is otherwise a valid rollover contribution that represents an eligible rollover distribution from a tax-favored retirement plan. And in the case of an IRA rollover, the certification cannot waive the one-rollover-per-year rule.
- An IRA trustee that accepts the rollover will need to report on Form 5498 that the contribution was accepted after the 60-day deadline.
- The IRS may later disagree with the certification on audit, for example, due to a material misstatement. This would invalidate the rollover contribution and lead to taxation and penalties. On the other hand, the IRS could also determine that the taxpayer qualifies for the 60-day waiver upon audit (even if no self-certification was completed).

In Closing

The new IRS procedure is effective immediately and should remove barriers that may have stood in the way of preserving the tax-favored treatment of rollover deposits that were not completed in time due to circumstances that are mostly no fault of the affected individual.

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