

# Elder Client PLANNER

## Energy credits enhanced in Recovery Act

**TAX CREDITS: Buying energy-efficient assets may make you feel like you're doing your part, but are they worth it?**

**By Tim Hilger, CPA**

*Editor*

Taped to my monitor is a quote from Albert Einstein: "If you can't explain it simply, you don't understand it well enough." The Spidell promise is to present practical information simply while anticipating client actions and questions.

When it comes to residential energy credits, I'm not sure I can keep that promise. I can provide you with the tax rules, but I can't help you answer common client questions like, "Does my water heater qualify?" or "Does this investment pencil out?"

Consider the word "qualify." Simply buying energy-efficient or "Energy Star" assets does not make a taxpayer eligible for an energy credit; the asset must qualify according to the statute: It must meet certain technical efficiency standards, and between IRC §§25C and 25D, those standards are set by no fewer than nine different government and nonprofit agencies. In many cases, those standards are, in turn, delegated to other agencies or regulatory authorities.

Ever hear of the National Fenestration Rating Council? While it sounds like you might have your veterinarian "defenestrate" your cat while you pace nervously in the waiting room, fenestration is actually just a dictionary word meaning the arrangement of openings in a building (doors and windows). The NFRC, it seems, is the only federally-recognized organization for determining the energy performance of windows, doors, and skylights.

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## How do you spell rollover relief? "Letter ruling"

**TAX: How to request relief when a distribution from an IRA or other qualified plan has not been "rolled over" to another IRA or qualified plan within 60 days and there is reasonable cause.**

**By David M. Fogel, CPA**

*Guest Contributor*

Earlier this year, the **Elder Client Planner** discussed the circumstances under which the IRS will waive the 60-day rollover requirement for distributions from an IRA or other qualified retirement plan.<sup>1</sup> This article explains how to make a request for such a waiver, what the user fees are, the circumstances under which the IRS grants relief, and what to report on the tax return while the request is pending.

### Background

Any amount distributed out of an IRA or other qualified plan to the individual for whose benefit the IRA or other qualified plan is maintained will not be included in gross income if the entire amount received is paid into an IRA or other qualified plan for the benefit of such individual within 60 days.<sup>2</sup>

The IRS may waive the 60-day requirement where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the individual's control.<sup>3</sup> The waiver applies only to distributions made after December 31, 2001.<sup>4</sup>

Rev. Proc. 2003-16<sup>5</sup> provides guidance to taxpayers regarding the circumstances under which the IRS will grant such a waiver. Except for one situation, the

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taxpayer must request a private letter ruling.

In deciding to grant a favorable letter ruling, the IRS will consider all relevant facts and circumstances, including:

1. Errors committed by a financial institution;
2. Inability to complete the rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error;
3. The use of the funds distributed (for example, whether the check was cashed); and
4. The time that has elapsed since the distribution occurred.<sup>6</sup>

The one exception in which the taxpayer doesn't have to request a letter ruling is where a financial institution receives the rollover funds within the 60-day period, the taxpayer follows all procedures required by the financial institution for depositing the funds into a qualified retirement plan, but solely due to the financial institution's error, the funds are not deposited into a qualified retirement plan. In that case, the IRS will grant automatic approval if the taxpayer deposits the funds into a qualified retirement plan within one year from the beginning of the 60-day period.<sup>7</sup>

The taxpayer should report the distribution on the return as a qualified rollover. The taxpayer should also attach a statement to the tax return describing the facts that show the requirements of Rev. Proc. 2003-16 have been satisfied and stating that the taxpayer qualifies for automatic approval.

**Requesting a letter ruling**

Rev. Proc. 2009-4<sup>8</sup> explains, in general, how to request a letter ruling from the IRS. The request must include sections that outline the facts, describe the ruling requested, state the applicable law, relate the law to the facts (analysis), and state a conclusion. In addition, the request must include numerous statements covering procedural matters, and it must be signed under penalties of perjury. A sample format for a letter ruling request is included in the Rev.

Proc.<sup>9</sup> A checklist is also provided to make sure that the letter ruling request is complete.<sup>10</sup>

The IRS's website includes a list of additional information that should be included with a letter ruling request for waiver of the 60-day rollover period.

Once completed, the letter ruling request must be sent to the following address:

Internal Revenue Service  
Attention: EP Letter Rulings  
P.O. Box 27063  
McPherson Station  
Washington, DC 20038

**What does it cost?**

The user fee for requesting a letter ruling to waive the 60-day rollover period is:<sup>11</sup>

Amount of Rollover	User Fee
Less than \$50,000	\$500
\$50,000 or more, less than \$100,000	\$1,500
\$100,000 or more	\$3,000

**Under what circumstances will the IRS grant relief?**

The IRS issues several dozen letter rulings each year granting waiver of the 60-day period. By far, the most often cited reason for missing the 60-day rollover requirement has been financial institution error, and most of these were situations where the funds from the IRA were deposited into a non-IRA account.<sup>12</sup> The second most often cited reason is that the taxpayer's physical or mental disability impaired the taxpayer's ability to make the rollover.<sup>13</sup> Incorrect advice received from a financial advisor is also grounds for waiver.<sup>14</sup> These letter rulings can't be cited as precedent,<sup>15</sup> but they do provide guidance showing the circumstances under which the IRS will likely grant relief.

A waiver will not be granted if the taxpayer simply believed that he or she had more than 60 days in which to make

the rollover, or if the financial institution didn't inform the taxpayer about the 60-day rollover requirement.<sup>16</sup>

As discussed above, the IRS will consider the use of the funds distributed. If the taxpayer has missed the 60-day rollover period, then the funds should be deposited into a separate account in order to demonstrate that they were not spent or used for non-retirement purposes.

**What should be reported on the tax return while the letter ruling request is pending?**

If the taxpayer believes that the facts and circumstances support a waiver of the 60-day period, then the taxpayer should request the letter ruling and file the tax return as if the rollover were made timely. A statement should be attached to the return disclosing the fact that the taxpayer received a distribution from an IRA or other qualified plan, has not made the rollover within the 60-day period, and that the distribution has not been included in income because the taxpayer has requested a letter ruling in accordance with Rev. Proc. 2003-16 for a waiver of the 60-day period.

If the IRS issues a favorable letter ruling, they will give the taxpayer 60 days from the date of issuance to make the rollover.

**Conclusion**

Before 2002, taxpayers who did not make the rollover within the 60-day period, for whatever reasons, were required to report the distribution in income. Now, they can file a letter ruling with the IRS asking for a waiver of the 60-day period if there were valid reasons for not making the rollover timely.

Filing the letter ruling and obtaining approval is not easy. It is quite a lot of paperwork. But if your client has received a large distribution from an IRA or other qualified plan, and there are valid reasons for not making the rollover within the 60-day period, it may be worth paying up to \$3,000 in user fees plus your fees for preparing the request

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instead of having your client pay the income tax on the distribution. 

**About the author**

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- <sup>1</sup> Renée Rodda, "In some cases, taxpayers will qualify for a waiver of the 60-day rollover requirement," **Elder Client Planner** (March 2009)
- <sup>2</sup> IRC §§402(c)(3)(A), 408(d)(3)(A) and 408(d)(3)(D)
- <sup>3</sup> IRC §§402(c)(3)(B) and 408(d)(3)(I)
- <sup>4</sup> §§644(a) and (b), Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16)
- <sup>5</sup> Rev. Proc. 2003-16, 2003-4 I.R.B. 359
- <sup>6</sup> Id., §3.02
- <sup>7</sup> Id., §3.03
- <sup>8</sup> Rev. Proc. 2009-4, 2009-1 I.R.B. 118
- <sup>9</sup> Id., p. 153
- <sup>10</sup> Id., p. 155
- <sup>11</sup> §6, Rev. Proc. 2009-8, 2009-1 I.R.B. 229, 232
- <sup>12</sup> See, e.g., PLRs 200847021, 200847023, 200850053, 200850055, 200852033, 200902015, 200904027, 200904032, 200904034, 200907037, 200907038, 200907042, 200907047, 200907048, 200909075, 200909076, 200909077 and 200910068
- <sup>13</sup> See, e.g., PLRs 200851043, 200901035, 200904038, 200906060, 200907047 and 200909069
- <sup>14</sup> See, e.g., PLRs 200852031 and 200852032
- <sup>15</sup> IRC §6110(k)(3)
- <sup>16</sup> See, e.g., PLRs 200907049 (taxpayer thought he had 90 days to make rollover) and 200847022 (financial advisor didn't tell taxpayer he had only 60 days to make the rollover)

## What to include with waiver request

Here is the additional information to include with your request to waive the 60-day rollover period.

Revenue Procedure 2006-4, Appendix A, contains a sample letter ruling request format. Appendix B contains a checklist of information which should be submitted with ruling requests made under the revenue procedure.

The following additional information should be supplied when making a request for an extension:<sup>1</sup>

- a) Either the full name of the qualified retirement plan and the name of the employer that sponsors the plan, or the full name of the IRA holder and the name of the trustee/custodian of the IRA making the distribution;
- b) If the request is being made on behalf of a surviving spouse (beneficiary) of an IRA holder or plan participant, include a copy of the beneficiary designation and a copy of the death certificate;
- c) If an IRA, include the account number;
- d) The amount(s) of the distribution(s);
- e) The date(s) the distribution(s) was/were made;
- f) The amount of federal and/or state taxes, if any, withheld from the distribution;
- g) A statement as to why the distribution(s) was/were made. The statement should indicate what was intended to be done with the distribution at the time of receipt, and should contain a description of what was actually done with the distribution including the name of the financial institution where the distribution was deposited, if applicable;

h) A detailed explanation as to why the 60-day rollover requirement was not met, such as:

- A description of any medical problems of the taxpayer and how the problems caused the failure to meet the 60-day requirement;
- A description of erroneous information from, or mistake by, a financial institution. If the erroneous information was in writing, copies of the correspondence must accompany the ruling request;
- Descriptions of any other event(s) or causes that prevented the completion of the rollover within 60 days.

**NOTE:** If the request for extension is based on erroneous advice/information, include an explanation as to how the information affected the taxpayer's ability to complete the rollover within the requisite 60-day period.

- i) All documentation relevant to the claimed hardship that prevented the timely completion of the rollover, including doctors' statements or bills regarding any mental or medical impairment, copies of any correspondence to or from the doctor(s) and medical institution(s), and copies of completed financial or institutional forms;
- j) Evidence that the distributed funds have not been used (e.g., copies of bank statements, etc.);
- k) State the name of the qualified retirement plan or IRA trustee/custodian where you intend to deposit the funds that are the subject matter of the ruling request if the request is approved;
- l) State whether the individual on whose

is 70½ or older. (If so, some of the funds distributed may be ineligible for rollover treatment because they are required to be distributed under the minimum required distribution rules of §408(a)(6) or §401(a)(9) — the individual may need to check with the holder of the IRA or plan administrator on this);

- m) If the waiver request involves an IRA to IRA rollover, state whether the one rollover per year rule of IRC §408(d)(3)(B) applies to the distribution which is the subject matter of the extension request.
- n) A signed and dated perjury statement as follows: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request and such facts are true, correct, and complete."
- o) The request for extension should state how long an extension is needed to make the rollover (a request may be made for an extension of a period not exceeding 60 days as measured from the date of issuance of the letter ruling granting the waiver of the 60-day rollover period).
- p) Powers of Attorney: If the taxpayer's request for extension is submitted by an authorized representative, then a Form 2848, Power of Attorney and Declaration of Representative, must be submitted with the request.

<sup>1</sup> Source: <http://www.irs.gov/retirement/article/0,,id=160470,00.html>