Relief for Missed IRA Rollovers

By David M. Fogel, EA, CPA

Introduction

Most of us know that a distribution from an IRA or some other qualified plan must be included in gross income except if the taxpayer makes a trustee-to-trustee transfer or "rolls over" the distribution to another IRA or qualified plan within 60 days.

But what if the distribution was mishandled in some way? For example, what if the bank was supposed to deposit the distribution into another IRA or qualified plan, and instead deposits it in a regular non-IRA or non-qualified plan account? What if the taxpayer failed to make the contribution within the 60-day period due to circumstances beyond the taxpayer's control?

The failure to satisfy the rollover requirements usually isn't discovered until after the 60-day rollover period has expired. Often, it is discovered when the taxpayer arrives at your office for preparation of the return and shows you a Form 1099-R reporting a taxable distribution.

Is there a procedure that a taxpayer can follow to obtain relief from having to include the distribution in income? Indeed there is. And it got a little easier this year when the IRS issued a new revenue procedure.

Background

Any amount distributed out of an IRA or other qualified plan will be excluded from income if it is transferred to an eligible retirement plan within 60 days.[1]

The IRS may waive the 60-day rollover requirement where the failure to waive such requirement would be against equity or good conscience, including where a casualty, disaster, or other event beyond the individual's control prevented the taxpayer from depositing the distribution into another IRA or other qualified plan.[2] The waiver applies to distributions made after December 31, 2001.[3]

Rev. Proc. 2003-16[4] established a procedure for taxpayers to apply for such a waiver. It describes the circumstances under which the IRS will grant such a waiver. Except for one situation involving financial institution error, the taxpayer must request a private letter ruling.

After issuing hundreds of such letter rulings, the IRS decided to modify this procedure in order to try to reduce the number of letter ruling requests.

Revenue Procedure 2016-47

In Rev. Proc. 2016-47,[5] the IRS modified Rev. Proc. 2003-16. Effective August 24, 2016, there are three options to obtain relief:

1. If the requirements of the Rev. Proc. are met, the taxpayer may follow a "self-certification" procedure (subject to verification on audit) to obtain a waiver of the 60-day period if the reason for not completing the rollover during the 60-day period was due to one or more of 11 specified circumstances;
2. The taxpayer may follow the procedure in Rev. Proc. 2003-16 for the exception involving financial institution error, which results in automatic approval of the waiver; or
3. The taxpayer may file for a private letter ruling.

Self-Certification Procedure

In its Appendix, Rev. Proc. 2016-47 includes a model letter that a taxpayer can provide to an IRA trustee or plan administrator in which the taxpayer certifies that the conditions of §3.02 of the Rev. Proc. have been satisfied.[6]

The conditions that must be satisfied are:

(1) The IRS must not have previously denied the taxpayer's waiver request;

(2) The taxpayer must have missed the 60-day rollover deadline because of one or more of 11 specified reasons; and

(3) The taxpayer must have contributed the funds to the plan or IRA as soon as practicable after the reason or reasons specified no longer prevent the taxpayer from making the contribution. This requirement is deemed satisfied if the taxpayer makes the contribution within 30 days after the reason or reasons specified no longer prevent the taxpayer from making the contribution.[7]

It is important to carefully examine this last requirement. If, for example, the taxpayer failed to contribute an IRA distribution to a new IRA within the 60-day rollover period due to illness, and several months have passed since the taxpayer recovered from the illness, then this last requirement will not be satisfied.

The 11 specified reasons are those for which the IRS has previously granted hundreds of private letter rulings. They are:

continued on p. 17

continued from p. 16

a) An error was made by either the financial institution making the distribution or the financial institution receiving the contribution;

b) The distribution, having been made in the form of a check, was misplaced and never cashed;

c) The distribution was deposited into an account that the taxpayer mistakenly thought was an eligible retirement plan, where it remained;

d) The taxpayer's principal residence was severely damaged;

e) A member of the taxpayer's family died;

f) The taxpayer or a member of the taxpayer's family was seriously ill;

g) The taxpayer was incarcerated;

h) Restrictions were imposed by a foreign country;

i) A postal error occurred;

j) The distribution was made due to an IRS levy and the proceeds of the levy have been returned to the taxpayer; and

k) The party making the distribution delayed providing information that the receiving plan or IRA required in order to complete the rollover, despite the taxpayer's reasonable efforts to obtain the information.[8]

The effect of providing the self-certification letter to the IRA trustee or plan administrator is that the trustee/administrator may rely on the letter in determining whether the taxpayer has satisfied the conditions for obtaining a waiver of the 60-day rollover requirement.[9] This reliance allows the trustee/administrator to report the distribution on Form 5498 as a valid rollover.

The self-certification is not deemed as the IRS's waiver of the 60-day rollover requirement. Rather, it merely allows the taxpayer to report the contribution on the return as a valid rollover unless the IRS later informs the taxpayer otherwise. As a result, the IRS, in an audit, may consider whether the taxpayer meets the requirements of Rev. Proc. 2016-47, and whether the taxpayer's circumstances surrounding the distribution and contribution satisfy the requirements for a waiver.[10]

Financial Institution Error

The one exception where the taxpayer doesn't have to request a letter ruling is when a financial institution receives the rollover funds within the 60-day period, and 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 such a 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.[11] 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 showing that the requirements of Rev. Proc. 2003-16 have been satisfied and stating that the taxpayer qualifies for automatic approval.

Private Letter Ruling

If the taxpayer doesn't satisfy the requirements of Rev. Proc. 2016-47, and if the "financial institution error" exception doesn't apply, then the taxpayer may request a letter ruling from the IRS.

In deciding to grant a favorable letter ruling, the IRS will consider all relevant facts and circumstances, including errors committed by a financial institution; inability to complete the rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; the use of the funds distributed (for example, whether the check was cashed); and the time that has elapsed since the distribution occurred.[12]

Rev. Proc. 2016-4[13] explains, in general, how to request a letter ruling from the IRS. The request must include separate 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 Rev. Proc. 2016-4.[14] A checklist is also provided to make sure that the letter ruling request is complete.[15]

On its website,[16] the IRS has provided additional information that should be included with a letter ruling request for waiver of the 60-day rollover period:

- If the distribution is made from a plan, the full name of the plan and the name of the employer that sponsors the plan;
- If the distribution is made from an IRA, the full name of the IRA owner, the IRA account number and the name of the trustee/custodian of the IRA making the distribution;
- If the request is being made on behalf of a surviving spouse (beneficiary) of a deceased IRA owner or plan participant, a copy of the beneficiary designation and a copy of the death certificate;
- The amount(s) of the distribution(s);
- The date(s) the distribution(s) was/were made;
- The amount of federal and/or state taxes, if any, withheld from the distribution;
- A copy of the Form 1099-R, if available;
- A statement as to why each distribution was made, indicating what was intended to be done with the distribution and what was actually done with the distribution, including the name of the financial institution where the distribution was deposited, if applicable;
- A detailed explanation as to why the 60-day rollover

continued on p. 18

continued from p. 17

requirement was not met and copies of all supporting documents;

- Evidence that the taxpayer has not used the distributed funds (for example, copies of bank statements, etc.);
- The name of the plan or IRA trustee/custodian where the taxpayer intends to make the rollover if a waiver is granted; and
- If the waiver request involves an IRA-to-IRA rollover, a statement regarding whether the taxpayer has made an IRA-to-IRA rollover in the past 12 months (not counting rollovers from traditional IRAs to Roth IRAs).

Once completed, the letter ruling request should be sent to Internal Revenue Service, Attn: EP Letter Rulings, Stop 31, P.O. Box 12192, Covington, KY 41012-0192.

Before Rev. Proc. 2016-47, the amount of the user fee for requesting a letter ruling to waive the 60-day rollover period depended upon the amount of the rollover. The user fee for rollovers less than $50,000 was $500, between $50,000 and $99,999 was $1,500, and for $100,000 or more was $3,000.[17] But effective 8/24/2016, the user fee is $10,000.[18]

If the IRS issues a favorable letter ruling, they will give the taxpayer 60 days from the date of issuance to make the contribution to the IRA or other qualified plan.

Summary and Conclusion

Before 2002, taxpayers who did not make the IRA rollover within the 60-day period, for whatever reason, were required to report the distribution in income. Currently, if they qualify under Rev. Proc. 2016-47, they can send a "self-certification" letter to the IRA trustee (which is subject to IRS audit) stating that they qualify for waiver of the 60-day rollover requirement.

In the case of financial institution error, a taxpayer can get automatic approval of the waiver by depositing the distributed funds into another IRA within one year of the distribution. Or, in the absence of either of these two situations, the taxpayer can request a letter ruling from the IRS asking for a waiver of the 60-day period if there are valid reasons for not making the rollover timely.

Filing for a letter ruling and obtaining approval is expensive. It is also quite a lot of paperwork. But if your client has received a large distribution from an IRA or other qualified plan and if there are valid reasons for not making the rollover within the 60-day period, and if in addition the client can't satisfy the requirements of Rev. Proc. 2016-47, then it may be worth paying the $10,000 user fee plus your fee for preparing the request instead of having your client pay the income tax on the distribution.

David M. Fogel, EA, CPA, is a self-employed tax consultant and frequent contributor to *California Enrolled Agent*. He provides tax consulting services to other tax practitioners and represents clients before the various tax agencies. David has more than 42 years of experience in tax controversies, including 26 years working for the IRS (8 years as a Tax Auditor and Revenue Agent, 18 years as an Appeals Officer), and 6 years as a tax advisor for law firms in Sacramento. David is an Enrolled Agent, a CPA, and is also admitted to practice before the United States Tax Court. He can be reached by email at dfogel@surewest.net or on the Internet at www.fogelcpa.com.

1 *IRC §§402(c)(3)(A), 408(d)(3)(A) and 408(d)(3)(D).*

2 *IRC §§402(c)(3)(B) and 408(d)(3)(I).*

3 *Act §§644(a) and (b), Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16).*

4 *Rev. Proc. 2003-16, 2003-4 I.R.B. 359.*

5 *Rev. Proc. 2016-47, 2016-37 I.R.B. 346.*

6 *See the Appendix of Rev. Proc. 2016-47 at https://www.irs.gov/pub/irs-drop/rp-16-47.pdf.*

7 *Id., §3.02.*

8 *Id., §3.02(2).*

9 *Id., §3.04(1).*

10 *Id., §3.04(2).*

11 *Rev. Proc. 2003-16, §3.03.*

12 *Id., §3.02.*

13 *Rev. Proc. 2016-4, 2016-1 I.R.B. 142.*

14 *Id., Appendix A at p. 182.*

15 *Id., Appendix B at p. 184.*

16 *https://www.irs.gov/retirement-plans/retirement-plans-faqs-relating-to-waivers-of-the-60-day-rollover-requirement.*

17 *§6.01(4) of Rev. Proc. 2015-8, 2015-1 I.R.B. 235, 238.*

18 *§2.01(3) of Rev. Proc. 2016-8, 2016-1 I.R.B. 242, 244 deleted the $500, $1,500 and $3,000 user fee structure and stated that rulings under this category will be processed under the "All other letter rulings" category. §6.01(4) of Rev. Proc. 2016-8, 2016-1 I.R.B. at 246 states that the user fee for "All other letter rulings" under the jurisdiction of the Employee Plans Office is $10,000.*