

ROLLOVER RELIEF

The IRS is authorized by statute to waive the 60-day period for rolling over retirement plan distributions into an individual retirement account (IRA) or other eligible retirement plan. The waiver allows individuals who fail to meet the 60-day rollover deadline to avoid current taxation if the failure is the result of casualty, disaster or other events beyond the individual's control, including error or neglect on the part of a financial institution. An automatic waiver applies if a financial institution receives rollover funds from an individual prior to the expiration of the 60-day rollover period, the individual complies with all of the financial institution's required procedures and the funds are not deposited into an eligible retirement plan on time. To obtain a waiver other than the automatic waiver, an IRS private letter ruling (PLR) is required. Revenue Procedure 2003-16 provides the details.

The PLR's issued by the IRS pursuant to Revenue Procedure 2003-16 which grant waivers of the 60-day rollover period suggest the circumstances that are viewed as beyond the taxpayer's reasonable control. For example, the IRS has ruled in favor of taxpayers in the following circumstances:

(1) an investment manager misappropriated funds from individuals' IRAs, and the individuals did not discover the withdrawals until after the 60-day period had expired. PLR 200327064.

(2) a taxpayer directed a bank to transfer funds from a brokerage account to his checking account, but the bank transferred the funds from his IRA instead, and the taxpayer did not discover it until after the 60-day period had expired. PLR 200401020.

(3) a taxpayer failed to roll over a check received from an IRA because the taxpayer was dealing with the taxpayer's spouse's critical illness. PLR 200406052.

However, the IRS has declined to grant the requested waiver when taxpayers do not demonstrate an intent to undertake a rollover transaction at the time of the original distribution. Accordingly, rollover relief has been denied in the following circumstances:

(1) an IRA owner took a series of distributions to pay personal expenses during a period of unemployment, and then sought to redeposit the amounts after obtaining employment. PLR 200417033.

(2) the spouse of a deceased IRA owner took a distribution and deposited it in a savings account, and then requested a waiver after discovering the tax consequences. PLR 200421003.

(3) the husband of a hospitalized IRA owner withdrew IRA funds in order to "spend down" the wife's assets to qualify for Medicaid, and then tried to redeposit the funds in the wife's IRA after her death twelve days later. PLR 200547024.

Observation: The PLRs issued by the IRS make it clear that rollover relief is available whenever a financial institution fails to properly carry out customer instructions relating to an existing IRA or other eligible retirement plan. For example, rollover relief can be used to avoid current taxation when a financial institution inadvertently puts IRA funds in a taxable account while implementing a customer's investment direction. *For any unintended IRA distributions after December 31, 2001, consider rollover relief under Rev. Proc. 2003-16.*

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