PART IX: ROLLOVER

3880. What is a rollover or rollover contribution and what are its tax effects?

A rollover or rollover contribution is the transfer of a distribution from a qualified plan, an IRC Section 403(b) tax sheltered annuity, an individual retirement plan, or an eligible Section 457 governmental plan. Distributions that are rolled over according to applicable IRC rules and regulations are not included in gross income until receipt at some time in the future (Q 3882). A rollover to a Roth IRA generally is a taxable event (Q 3617).

Once funds or properties are rolled over to an eligible retirement plan (Q 3883), they generally are subject to the tax treatment given that plan.[1] Different rules apply to distributions made from a traditional IRA to an eligible retirement plan other than an IRA. The portion of a distribution that is rolled over to an eligible retirement plan generally will be treated as coming first from non-after-tax contributions and earnings in all of the IRAs of the owner.[2] This rule effectively allows the owner to rollover the maximum amount permitted (Q 3625).

A direct distribution from a traditional IRA or a Roth IRA to a charity will be tax-free if it meets the requirements of the qualified charitable distribution rules available from 2006 through 2013 (Q 3881).

It is the responsibility of a plan administrator to determine whether a rollover it accepts is an eligible rollover distribution (Q 3882) and plans that accept invalid rollovers can face disqualification. Regulations state that a receiving plan will not be disqualified for accepting a rollover that fails to meet the requirements for an eligible rollover distribution, if the plan administrator reasonably concluded such requirements would be met and distributed the amount of the invalid rollover contribution, plus any earnings, to the employee within a reasonable time after the administrator determined that the contribution was an invalid rollover contribution. It is not necessary that a distributing plan have a determination letter with respect to its status as a qualified plan for the administrator of a receiving plan to reasonably conclude that a contribution is a valid rollover contribution.[3]

Although the IRS generally takes the position that the right to a rollover is personal to an employee and cannot be exercised by anyone else, except in the case of a spousal rollover (Q 3893), at least one court has held that where an employee received a qualifying rollover distribution but died before making the rollover, the employee's executor could complete the rollover, as long as the sixty day period had not expired.[4]

There are requirements for a direct rollover option (Q 3884) and rules regarding the application of a mandatory income tax withholding rate of 20 percent on rollovers not made through a direct rollover (Q 3887). In some cases, a non-participant in a qualified plan may roll over amounts received from a plan by reason of a divorce or separation agreement (Q 3888).

1. See IRC Sec. 408(d).
2. IRC Sec. 408(d)(3).
3. Treas. Reg. §1.401(a)(31)-1, A-14.
4. *Gunther v. U.S.*, 573 F. Supp. 126, 82-2 USTC ¶13,498 (W.D. Mich. 1982).

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3881. What is a charitable IRA rollover or qualified charitable distribution?

For tax years 2006 through 2013, a taxpayer age 70½ or older was permitted to make a qualified charitable distribution (QCD) from a traditional IRA or Roth IRA that was not includable in the gross income of the taxpayer.[1] The exclusion for qualified charitable distributions generally was available for distributions from any type of IRA (including a Roth IRA described in Section 408A and a deemed IRA described in Section 408(q) that is neither an ongoing SEP IRA described in Section 408(k) nor an ongoing SIMPLE IRA described in Section 408(p).[2] The provision permitting a qualified charitable distribution to be excluded from gross income was allowed to expire at the end of 2011, but the American Taxpayer Relief Act of 2012 ("ATRA 2012") retroactively revived the provision for 2012 and extended it for the 2013 tax year. As of the date of this publication, Congress has not yet acted to extend the provision for 2014 and beyond.[3]

Planning Point: Note that previously, each time the QCD provisions have expired, Congress has voted to reinstitute them, but has always done so in the latter part of the year following the year in which the QCD rules were set to expire. Taxpayers should keep Congress' history of retroactively reinstating the QCD rules in mind when planning for the 2014 tax year.

A qualified charitable distribution is any distribution:

1. not exceeding $100,000 in the aggregate during the taxable year;
2. made directly, in a trustee-to-charity transfer (including a check from an IRA made payable to a charity and delivered by the IRA owner to the charity);[4]
3. from a traditional or Roth IRA (although distributions from ongoing SEPs and SIMPLE IRAs do not qualify);
4. to a public charity (but not a donor-advised fund or supporting organization);
5. that would otherwise qualify as a deductible charitable contribution (not including the percentage of income limits in IRC Section 170(b) (Q 633)); and
6. to the extent the distribution would otherwise be includable in gross income.[5]

No charitable income tax deduction is allowed for a qualified charitable distribution.[6]

Planning Points: Only distributions from a taxpayer's own IRA are includable to determine whether a taxpayer has met the $100,000 limit. Therefore, although married taxpayers can make qualified distributions totaling $200,000, each spouse can only make distributions of up to $100,000 from his or her own IRA.

1. IRC Sec. 408(d)(8), as amended.
2. Notice 2007-7, 2007-1 C.B. 395, A-36.
3. The American Taxpayer Relief Act of 2012, Pub. Law No. 112-240.
4. Notice 2007-7, 2007-1 CB 395.
5. IRC Sec. 408(d)(8).
6. IRC Sec. 408(d)(8)(E).

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A participant in a qualified plan, an IRC Section 403(b) tax sheltered annuity, or an eligible IRC Section 457 governmental plan is first required to perform a rollover to a traditional IRA before taking advantage of a charitable IRA rollover.

Transfers to donor-advised funds, supporting organizations, private foundations, charitable remainder trusts, charitable gift annuities, and pooled income funds are not qualified charitable distributions.

Rollovers to charities by taxpayers who reside in states that tax IRA distributions and do not have a charitable deduction cannot escape tax at the state level. *Ted R. Batson, Jr., MBA, CPA, and Gregory W. Baker, JD, CFP®, CAP, Renaissance Administration, LLC.*

If a qualified charitable distribution is made from any IRA funded with nondeductible contributions, the distribution is treated as coming first from deductible contributions and earnings.[1] This is contrary to the general rule that distributions from a traditional IRA with both deductible and nondeductible contributions are deemed made on a pro-rata basis.[2]

Qualified charitable distributions count toward a taxpayer's required minimum distributions (Q 3634).[3]

The prohibition on making a qualified charitable distribution from a SEP IRA or a SIMPLE IRA only applies to "ongoing" SEP IRAs or SIMPLE IRAs. These kinds of IRAs are ongoing if a contribution is made for the taxable year of the charitable distribution.[4]

3882. What is required to roll over a distribution received from a qualified retirement plan or an eligible Section 457 governmental plan?

If any portion of the balance to the credit of an employee in a qualified retirement plan is paid in an eligible rollover distribution and the distributee transfers any portion of the property received to an eligible retirement plan (Q 3879), then the amount of the distribution so transferred generally will not be includable in income.[5] Unless otherwise indicated, the rules that apply to qualified plans are incorporated by reference into the requirements for eligible Section 457 governmental plans.

An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the employee in a qualified trust, except that the term does not include:

(1) any distribution that is part of a series of substantially equal payments, at least annually, made over the life or life expectancy of the employee or the joint lives or life expectancies of the employee and his or her designated beneficiary,

(2) any distribution made for a specified period of ten years or more,

1. IRC Sec. 408(d)(8)(D).
2. IRC Secs. 72, 408(d)(1).
3. IRC Sec. 408(d)(8), as amended.
4. Notice 2007-7, 2007-1 CB 395.
5. IRC Sec. 402(c)(1).

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(3) any distribution that is a required minimum distribution under IRC Section 401(a)(9), and

(4) any hardship distribution.[1]

Regulations specify other items that are not considered eligible rollover distributions, including any portion of a distribution excludable from gross income other than net unrealized appreciation (although this has been modified by subsequent legislation), the Table 2001 or P.S. 58 cost of life insurance (Q 3843), corrective distributions of excess contributions and excess aggregate contributions (Q 3733), excess deferrals (Q 3705), and dividends paid on employer securities under IRC Section 404(k) (Q 3746).[2] Treasury Regulations Sections 1.402(c)-2, A-9, and 1.401(a)(31)-1 provide guidance on the treatment of plan loans for purposes of the rollover and withholding rules.

If a qualified retirement plan distributes an annuity contract to a participant, amounts paid under that contract are considered to be payments of the balance to the participant's credit and may be treated as eligible rollover distributions to the extent they would otherwise qualify. Therefore, a participant may surrender the annuity contract and treat the sum received as an eligible rollover distribution to the extent that it is includable in income and is not a required distribution under IRC Section 401(a)(9).[3] The IRS determined that a separate lump sum settlement payment to the widow of a plan participant who already was receiving monthly payments under the plan was eligible for rollover treatment under IRC Section 402(c)(4).[4]

A distribution of property other than money is treated the same. The amount transferred equals the property distributed.[5] A taxpayer may not retain property received in a distribution and simply rollover a cash amount representing the fair market value of the property.[6] Conversely, a taxpayer may not take cash received in a distribution, convert it into stock or any other type of investment, and then contribute the converted cash investment into an IRA as a rollover.[7] This rule applies to IRA and qualified retirement plan rollovers, including rollovers into Roth IRAs.

Where a distribution includes property and exceeds the rollover contribution, the participant, following a sale, may irrevocably designate the portion of the money received, and the portion of the proceeds of the sale, that are to be treated as included in the rollover and the portions that are to be deemed attributable to nondeductible employee contributions, if any. If the taxpayer fails to make a designation, allocations will be made on a ratable basis.[8] Under the basis recovery rules of IRC Section 72(e), nondeductible employee contributions are recovered first from amounts not rolled over.[9]

1. IRC Secs. 402(c)(4), 457(e)(16).
2. Treas. Regs. §§1.402(c)-2, A-3, 1.402(c)-2, A-4.
3. Treas. Reg. §1.402(c)-2, A-10; Let. Rul. 9338041.
4. Let. Rul. 9718037.
5. IRC Sec. 402(c)(1)(C).
6. Rev. Rul. 87-77, 1987-2 CB 115.
7. *Lemishow v. Comm.*, 110 TC 110 (1998).
8. IRC Secs. 402(c)(6), 457(e)(16)(B).
9. Notice 87-13, 1987-1 CB 432, A-18; Let. Rul. 9043056.

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The IRS determined that a mistaken transfer by a broker of an otherwise eligible rollover distribution from a qualified plan into a brokerage account and then into an IRA failed to qualify as an eligible rollover and was includable in the taxpayer's gross income.[1] Taxpayers who were defrauded by their investment advisor of IRA distributions intended to be rollovers were not permitted to replace the stolen assets from other funds and treat the replacement assets as rollover contributions.[2]

The maximum amount that may be rolled over generally is the amount that would be includable in income if not rolled over.[3] After-tax contributions can be rolled over from a qualified plan to a traditional IRA or transferred in a direct trustee-to-trustee transfer to a defined contribution plan provided the plan separately accounts for after-tax contributions. After-tax contributions, including nondeductible contributions to a traditional IRA, may not be rolled over from a traditional IRA into a qualified plan, Section 403(b) tax sheltered annuity, or eligible Section 457 governmental plan.[4] Rollover amounts will be treated as first consisting of taxable amounts.[5]

Unless a rollover is carried out by means of a direct rollover, a rollover generally must be completed within sixty days after receipt of the distribution (Q 3895).[6] The IRS has the authority to waive the sixty day requirement where failure to waive it would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to the requirement.[7] Guidance on the requirements for a hardship waiver of the sixty day requirement has been provided by the IRS.[8]

Unless a rollover is carried out by means of a direct rollover, the distribution amount will be subject to a mandatory income tax withholding rate of 20 percent (Q 3884, Q 3887).[9]

Rollover contributions may be divided among several traditional IRAs.[10] These may be either existing plans or plans newly created to receive the rollover (Q 3891). A traditional IRA inherited from someone who died after 1983, other than a deceased spouse, generally is ineligible to receive a rollover. If an individual retirement annuity is used, it may not be an endowment contract. Although property may normally be rolled over, a rollover to a traditional individual retirement account may not include a retirement income, endowment, or other life insurance contract because IRC Section 408(a)(3) prohibits investment of individual retirement account funds in life insurance contracts.[11] A rollover may be made from a qualified plan even though the participant is an active participant in another plan.

1. Let. Rul. 9847031.
2. FSA 199933038.
3. IRC Secs. 402(c)(2), 457(e)(16)(B).
4. IRC Secs. 402(c)(2), 457(e)(16)(B).
5. See IRC Sec. 402(c)(2).
6. IRC Sec. 402(c)(3)(A), 457(e)(16)(B).
7. IRC Sec. 402(c)(3)(B).
8. See Rev. Proc. 2003-16, 2003-1 CB 359.
9. IRC Sec. 3405(c)(1).
10. See Rev. Rul. 79-265, 1979-2 CB 186; Let. Rul. 9331055.
11. Rev. Rul. 81-275, 1981-2 CB 92.

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3883. What is an eligible retirement plan for purposes of the rollover rules?

The definition of "eligible retirement plan" depends on the plan from which a rollover is made. The availability of rollovers between various types of plans was considerably expanded by EGTRRA 2001.

An eligible retirement plan with respect to a distribution from a qualified plan means an IRA, another qualified plan, a Section 403(a) annuity, a Section 403(b) tax sheltered annuity, and an eligible Section 457 governmental plan (provided it agrees to separately account for funds received from any eligible retirement plan except another eligible Section 457 governmental plan).[1] For taxpayers wishing to preserve any capital gains or special averaging treatment (Q 3862), a distribution can be made to a conduit IRA and rolled back to another qualified plan. For this purpose, money from a qualified plan may not be commingled with other money (Q 3891).

Non-Roth IRAs (traditional, SEP, and SIMPLE). An eligible retirement plan with respect to a distribution from a non-Roth IRA (an individual retirement account or an individual retirement annuity) means an IRA, a qualified plan, a Section 403(a) annuity, an eligible Section 457 governmental plan (provided it agrees to separately account for funds received from any eligible retirement plan except another eligible Section 457 governmental plan), and a Section 403(b) tax sheltered annuity (Q 3891).[2] Amounts paid or distributed out of a SIMPLE IRA during the first two years of participation may be rolled over only to another SIMPLE IRA.[3] The only rollover permitted to a SIMPLE IRA is from another SIMPLE IRA.

Roth IRAs. A distribution from a Roth IRA generally can be rolled over only to another Roth IRA. A rollover or conversion from a non-Roth IRA or other retirement plan into a Roth IRA generally is a taxable event (Q 3617).[4]

Section 403(b) annuity. An eligible retirement plan with respect to a distribution from a Section 403(b) tax sheltered annuity includes a non-Roth IRA, a qualified plan, a Section 403(a) annuity, an eligible Section 457 governmental plan (provided it agrees to separately account for funds received from any eligible retirement plan except another eligible Section 457 governmental plan), and another Section 403(b) annuity.[5]

Eligible Section 457 governmental plan. An eligible retirement plan with respect to a distribution from an eligible Section 457 governmental plan includes a non-Roth IRA, a qualified plan, a Section 403(a) annuity, another eligible Section 457 governmental plan and a Section 403(b) annuity.[6]

1. IRC Secs. 402(c)(8), 402(c)(10).
2. IRC Secs. 408(d)(3)(A), 402(c)(10).
3. IRC Sec. 408(d)(3)(G).
4. IRC Secs. 408A(e), 402(c)(8)(B).
5. IRC Secs. 403(b)(8)(A)(ii), 402(c)(10).
6. IRC Sec. 457(e)(16).

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3884. Must a participant receiving an eligible rollover distribution have the option of making a direct rollover to another qualified plan?

Yes.

A qualified plan, a Section 403(b) tax sheltered annuity, and an eligible Section 457 governmental plan must provide a participant receiving an eligible rollover distribution the option to have the distribution transferred in the form of a direct rollover to another eligible retirement plan.[1] This direct rollover option generally must be provided to any participant receiving a distribution.[2]

A direct rollover is defined as an eligible rollover distribution (Q 3882) that is paid directly to an eligible retirement plan (Q 3883) for the benefit of the distributee. A direct rollover may be accomplished by any reasonable means of direct payment, including the use of a wire transfer or a check that is negotiable only by the trustee of the eligible retirement plan.[3] Giving the check to the distributee for delivery to the eligible retirement plan is considered reasonable provided that the check is made payable to the trustee of the eligible retirement plan for the benefit of the distributee.[4] Certain amounts may be rolled over only in the form of a trustee-to-trustee transfer.[5] Plans are not required to accept rollovers, direct or otherwise.

If a participant's total distribution is expected to be less than $200, the participant need not be offered the option of a direct rollover. While a participant must be permitted to elect a direct rollover of only a portion of the distribution, a plan administrator may require that this direct rollover portion equal at least $500. In the case of Section 403(b) tax sheltered annuities, the payor of the eligible rollover distribution is treated as the plan administrator.

A plan administrator is not required to permit a participant to make a direct rollover of only a portion of the distribution if the full amount of the distribution totals less than $500. A plan administrator may permit a participant to divide his or her distribution into separate distributions to be paid to two or more eligible retirement plans in direct rollovers but is not required to do so.[6]

If an eligible rollover distribution from a qualified retirement plan, tax sheltered annuity, or eligible governmental 457 plan is not handled by means of a direct rollover, the distribution will be subject to a mandatory income tax withholding rate of 20 percent (Q 3887).[7]

Automatic Rollovers

Plans subject to the direct rollover rules are required to provide that a cash-out distribution (Q 3785) in excess of $1,000 and less than $5,000 will automatically be transferred to an

1. IRC Secs. 401(a)(31), 403(b)(10), 457(d)(1)(C).
2. Treas. Reg. §1.402(c)-2, A-1.
3. Treas. Reg. §1.401(a)(31)-1, A-3.
4. Treas. Reg. §1.401(a)(31)-1, A-4.
5. See IRC Sec. 402(c)(2).
6. Treas. Reg. §1.401(a)(31)-1, A-2, A-9 to A-11.
7. IRC Sec. 3405(c)(1).

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individual retirement plan unless the distributee affirmatively elects to have it transferred to another eligible retirement plan or elects to receive it directly.

3885. Is there a safe harbor for plans that are subject to the direct rollover rules?

DOL regulations provide a safe harbor for plan fiduciaries who comply with certain requirements outlined below.[1]

To qualify for the safe harbor, a plan fiduciary generally must meet six conditions:

(1) The distribution must not exceed $5,000, not including balances rolled into the plan from another plan or an IRA. The safe harbor applies to balances of $1,000 or less, even though those balances are not subject to the automatic rollover rules;

(2) The distribution must be to an individual retirement account or annuity pursuant to a written agreement with the individual retirement plan provider that addresses the default investments and related fees and expenses;

(3) The distribution must be invested in a manner designed "to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity." The investment must be offered by a state or federally regulated financial institution and must seek to maintain a stable dollar value (e.g., money market funds, interest-bearing savings accounts, certificates of deposit, and stable value products);

(4) The fees and expenses charged to the IRA may not be higher than fees charged by the IRA trustee or custodian for other rollover IRAs;

(5) The summary plan description provided to plan participants must provide an explanation of the plan's automatic rollover provisions, including an explanation of the expenses and default investments in the rollover IRA and a plan contact for further information; and

(6) The selection of the IRA custodian or trustee and investment options must not result in a prohibited transaction under ERISA Section 406. The DOL has finalized a class exemption that will allow financial institutions to establish IRAs for their own employees.

3886. What notice requirements must a plan satisfy if it is subject to the direct rollover rules?

Under IRC Section 402(f), a plan administrator, within a reasonable time before a distribution is made, must provide the recipient of the distribution with a written explanation of the options available for transferring the funds. The explanation must include the provisions under

1. Labor Reg. §2550.404a-2; IRC Sec. 401(a)(31)(B); EGTRRA 2001, Sec. 657(a).

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which the recipient may have the funds transferred by means of a direct rollover and under which circumstances the income tax withholding requirements will apply. Where applicable, the notice must explain that the automatic rollover rules apply to certain distributions.[1]

With respect to qualified plans and eligible Section 457 governmental plans, the notice generally must be given no fewer than thirty days and no more than ninety days before the date of distribution. If the recipient elects a distribution, the plan will not fail to comply with these notice requirements merely because the distribution is made fewer than thirty days after notice is given if the plan administrator provides information to the recipient that clearly indicates that he or she has the opportunity to consider the direct rollover decision for at least thirty days after receiving notice.[2] With respect to Section 403(b) annuities, Treasury Regulation Section 1.402(f), A-2, is not applicable in determining what is considered to be a reasonable time for providing the notice. The payor of a Section 403(b) annuity will be deemed to have provided the explanation within a reasonable time if it complies with the time period in this section of the regulations.[3]

The IRS has issued two safe harbor explanations that plan administrators may use to satisfy the notice requirements of IRC Section 402(f).[4]

The explanations may be provided to recipients of eligible rollover distributions from an employer plan in order to satisfy IRC Section 402(f). The first safe harbor explanation applies to a distribution not from a designated Roth account (as described in IRC Section 402A). The second safe harbor explanation applies to a distribution from a designated Roth account. These safe harbor explanations update the safe harbor explanations that were published in Notice 2002-3, 2002-1 C.B. 289, to reflect changes in the law. These safe harbor explanations also reorganize and simplify the presentation of the information.

The IRS has issued final regulations that permit the use of electronic media to satisfy the IRC Section 402(f) notice requirements. Under the regulations, notice may be provided either in written form on paper or through an electronic medium. Any electronic notice issued must use a medium that is reasonably accessible to the participant such as e-mail or a plan website. The participant may request the notice on a paper document that must be provided free of charge.[5]

3887. If a rollover is not made through a direct rollover, must income tax be withheld from the distribution?

Distributions from qualified retirement plans, tax sheltered annuities, and eligible Section 457 governmental plans are subject to a mandatory income tax withholding rate of 20 percent unless the transfer is handled by means of a direct rollover.[6] An employee receiving a distribution may not elect out of the withholding requirement. Distributions from traditional IRAs are not subject to mandatory 20 percent withholding (Q 3628).

1. IRC Secs. 402(f), 457(e)(16)(B).
2. Treas. Reg. §1.402(f)-1, A-2.
3. Treas. Reg. §1.403(b)-2, A-3.
4. Notice 2009-68; 2009-2 C.B. 423.
5. Treas. Reg. §1.402(f)-1, A-5.
6. IRC Secs. 3405(c)(1), 457(e)(16)(B).

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If a participant's total distribution is expected to be less than $200, the participant need not be offered the option of a direct rollover.[1]

If a participant receives an eligible rollover distribution that is subject to the 20 percent withholding rate, the 20 percent withheld will be includable in income to the extent required by IRC Section 402(a), IRC Section 403(b)(1), or IRC Section 457(a)(1)(A) even if the participant rolls over the remaining 80 percent of the distribution within the sixty day period (Q 3895).

Because the amount withheld is considered to be an amount distributed under those sections, the participant may add an amount equal to the 20 percent withheld to the 80 percent he or she has received, resulting in a rollover of the full distribution amount.

The 10 percent early or premature distribution penalty (Q 3629, Q 3948) may apply to the amount withheld where only the remaining 80 percent of the distribution is rolled over from a qualified plan or a Section 403(b) plan.[2]

A distribution from an eligible Section 457 governmental plan is treated as an early distribution from a qualified plan only to the extent that it represents funds rolled over from a qualified plan, a Section 403(b) plan, or a traditional IRA.[3]

Where a distributee elects to transfer a portion of the distribution by a direct rollover and receive the remainder, the 20 percent withholding requirement applies only to the portion of the distribution that the distributee actually receives. It does not apply to the portion of the distribution that is transferred directly to another eligible retirement plan.[4]

In calculating the amount to be withheld, there are special rules if the distribution includes employer stock, other property, or a deemed distribution of a plan loan balance.[5]

3888. May an individual who is not a participant in a qualified plan roll over amounts received from the plan by reason of a divorce or separation agreement?

Yes, if the agreement is a qualified domestic relations order ("QDRO") and certain requirements are met.[6]

A QDRO is a decree or judgment under state domestic relations law that recognizes or creates the right of a spouse or child to receive, or to have set aside, a portion of a participant's interest in a qualified plan, 403(b) plan, or eligible Section 457 governmental plan (Q 3816, Q 3568).[7]

If an alternate payee who is the spouse or former spouse of the participant receives a distribution by reason of a QDRO, the rollover rules apply to the alternate payee as if the alternate

1. Treas. Reg. §1.401(a)(31)-1, A-11.
2. Treas. Regs. §§1.402(c)-2, A-11, 1.403(b)-2, A-1.
3. IRC Sec. 72(t)(9).
4. Treas. Reg. §31.3405(c)-1, A-6.
5. IRC Sec. 3405(e)(8).
6. Let. Ruls. 9109052, 8744023, 8712066, 8608055.
7. IRC Secs. 414(p)(1)(A), 414(p)(12).

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payee were the participant.[1] Thus, the alternate payee can avoid the requirement of including the distribution in income to the extent any portion of an eligible rollover distribution is directly rolled over or rolled over to an eligible retirement plan within sixty days.[2]

A qualified retirement plan may be an eligible retirement plan for an alternate payee who is a spouse or former spouse of the participant and who receives the distribution by reason of a QDRO.[3] This kind of rollover must be handled through a direct rollover to avoid a mandatory income tax withholding rate of 20 percent (Q 3884, Q 3887).[4] There are separate rules applicable to surviving spouses (Q 3893).

QDRO rules do not apply to IRAs. An IRA, however, can be transferred tax-free in connection with a divorce if the correct procedure is followed. In such cases, the transfer of an individual's interest in an IRA or an individual retirement annuity to a spouse or former spouse under a divorce or separation instrument is not considered a taxable transfer made by the individual, and such interest at the time of the transfer is treated as the spouse's IRA and not such individual's IRA. Thereafter the account or annuity will be treated as maintained for the benefit of the spouse.[5]

3889. May a participant who receives a distribution of an annuity from a qualified pension or profit sharing plan surrender the annuity and roll over the proceeds?

Where a qualified pension or profit sharing plan distributes an ordinary annuity contract, deferred or otherwise, to a participant, the annuity contract or cash amount received on surrender of the contract may be rolled over if the distribution is an eligible rollover distribution and meets the requirements necessary for rollover of such a distribution (Q 3882).[6] For purposes of the sixty day rule, the distribution takes place on distribution of the annuity contract from the plan, not on its surrender or transfer to the receiving plan (Q 3895).[7]

3890. When may a participant roll over permitted distributions from a Section 403(b) tax sheltered annuity?

For distributions received from tax sheltered annuities, any portion of the balance to the credit of an employee that is paid to the employee in the form of an eligible rollover distribution (Q 3882) and transferred to an eligible retirement plan (Q 3883) is not includable in income by the employee. Rollover distributions from tax sheltered annuities may be made to another tax sheltered annuity, an IRA, a qualified plan, a Section 403(a) plan, and an eligible Section 457 governmental plan (provided the IRC Section 457 plan agrees to separately account for such funds).[8] A rollover to a Roth IRA generally is a taxable event (Q 3617).

1. IRC Sec. 402(e)(1).
2. IRC Sec. 402(c)(1).
3. See IRC Sec. 402(e)(1)(B).
4. IRC Sec. 3405(c)(1).
5. IRC Sec. 408(d)(6).
6. IRC Sec. 402(c).
7. See Let. Ruls. 8014034, 8035054.
8. IRC Secs. 402(c)(1), 403(b)(8).

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A trustee-to-trustee transfer from a Section 403(b) plan to a defined benefit governmental plan that is used to purchase permissive service credits will be excluded from income.[1] In a 1991 ruling, the Tax Court disallowed rollover treatment for such a transfer.[2] A proper rollover was not achieved where a taxpayer invested a tax sheltered annuity distribution in a certificate of deposit.[3]

Distributions excepted from the term eligible rollover distribution include any:

(1) distribution that is part of a series of substantially equal payments made over the life or life expectancy of the employee or the joint lives or life expectancies of the employee and his or her designated beneficiary,

(2) distribution made for a specified period of ten years or more,

(3) distribution that is a required minimum distribution under IRC Section 401(a)(9), and

(4) hardship distribution.[4]

Regulations specify other items not considered to be eligible rollover distributions, including any portion of a distribution excludable from gross income (although this has been modified by subsequent legislation), the Table 2001 or P.S. 58 cost of life insurance (Q 3935), and corrective distributions of excess deferrals (Q 3921) and excess employer matching contributions (Q 3913).[5] Treasury Regulation Sections 1.402(c)-2, A-9, and 1.401(a)(31)-1 provide guidance on the treatment of plan loans for purposes of the rollover and withholding rules.

A distribution of property other than money is treated the same way. The amount transferred equals the value of the property distributed.[6]

The maximum amount that may be rolled over generally is the amount that would be includable in income if not rolled over.[7] After-tax contributions can be rolled over to a traditional IRA or transferred in a direct trustee-to-trustee transfer to a defined contribution plan, provided the plan separately accounts for after-tax contributions. After-tax contributions, including nondeductible contributions to a traditional IRA, may not be rolled over from a traditional IRA into a qualified plan, Section 403(b) tax sheltered annuity, or eligible Section 457 governmental plan. Rollover amounts will be treated as first consisting of taxable amounts.[8]

The IRS has indicated that a direct rollover may not be made of amounts that are not eligible for distribution from a Section 403(b) annuity due to the distribution restrictions of IRC Section 403(b)(11) (i.e., distributions payable only when the employee attains age 59½, dies,

1. IRC Sec. 403(b)(13).
2. See *Tolliver v. Comm.*, TC Memo 1991-460.
3. *Adamcewicz v. Comm.*, TC Memo 1994-361.
4. IRC Secs. 402(c)(4), 408(b)(8)(B).
5. Treas. Regs. §§1.402(c)-2, A-3 & A-4, 1.403(b)-2, A-1.
6. IRC Sec. 402(c)(1)(C).
7. IRC Sec. 402(c)(2).
8. IRC Secs. 402(c)(2), 403(b)(8)(B).

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or becomes disabled). These amounts may be transferred between tax sheltered annuities if the requirements of the regulations can be met.[1]

Reaching a similar conclusion, a federal district court held that funds in a tax sheltered annuity attributable to a salary reduction agreement were not eligible for rollover treatment unless the requirements of IRC Section 403(b)(11) were satisfied (Q 3910).[2]

Funds subject to distribution requirements may be transferable to another tax sheltered annuity in a direct transfer (Q 3931). A deemed distribution under IRC Section 72(p) is not eligible to be rolled over to an eligible retirement plan.[3]

If funds are not distributed in a direct rollover, a rollover generally must be completed within sixty days after the distribution is received (Q 3895).[4] The IRS has the authority to waive the sixty day requirement where failure to waive it would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to the requirement.[5] Guidance on the requirements for this hardship waiver has been issued.[6]

Unless a rollover is done by means of a direct rollover, the distribution amount will be subject to a mandatory income tax withholding rate of 20 percent (Q 3884, Q 3887).[7]

3891. When may rollover contributions be made from an IRA by the owner of the plan?

It depends on the type of individual retirement plan owned and the source from which the funds in the plan originated.

No rollover from a traditional or Roth IRA is permitted if the individual for whose benefit the plan is maintained acquired the plan by reason of the death of another individual (i.e., in the case of an inherited plan) who died after 1983. This does not apply where the plan is maintained for the benefit of the surviving spouse of the deceased individual. This rule also does not prohibit a trustee-to-trustee transfer to an identically-titled beneficiary IRA.[8]

A qualified rollover contribution may be made from a Roth IRA to another Roth IRA or from a traditional IRA to a Roth IRA. A qualified rollover contribution means a rollover contribution to a Roth IRA from another Roth IRA or from a traditional IRA but only if the rollover contribution meets the requirements discussed below under the heading "Rollover to Another IRA."[9] Special rules apply to rollovers of traditional IRAs to Roth IRAs (Q 3617).

1. Treas. Reg. §1.403(b)-10.
2. *Frank v. Aaronson*, 1996 U.S. Dist. LEXIS 15617.
3. Treas. Reg. §1.72(p)-1, A-12.
4. IRC Sec. 402(c)(3).
5. IRC Sec. 402(c)(3)(B).
6. See Rev. Proc. 2003-16, 2003-1 CB 359.
7. IRC Secs. 403(b)(10), 3405(c)(1).
8. IRC Secs. 408(d)(3)(C), 408A(a).
9. IRC Sec. 408A(e).

For tax years prior to 2008, no rollover contribution from a tax sheltered annuity or a qualified plan, other than a designated Roth account (Q 3716), could be made to a Roth IRA, and, thus, no rollover contribution could be made from a Roth IRA to a tax sheltered annuity or to a qualified plan other than to a designated Roth account.[1]

A distribution from a designated Roth account may be rolled over to another designated Roth account of the individual from whose account the payment or distribution was made or to a Roth IRA of the individual.[2] Beginning in 2008, a direct rollover or conversion may be made from a qualified plan, a tax sheltered annuity, or a Section 457 eligible governmental plan to a Roth IRA (Q 3617).

A rollover may be made from one SIMPLE IRA (Q 3654) to another SIMPLE IRA, but a rollover from a SIMPLE IRA to a traditional IRA or to a Roth IRA is permitted only in the case of distributions to which the 25 percent early distribution penalty does not apply; the penalty generally applies during the first two years of participation (Q 3860).[3] To the extent that an employee is no longer participating in a SIMPLE IRA plan and two years have expired since the employee first participated in the plan, the employee may treat the SIMPLE IRA account as a traditional IRA.[4]

Once in a lifetime, a taxpayer may make a qualified HSA funding distribution (Q 381).[5]

Rollover to a Qualified Retirement Plan

An individual generally may receive a distribution from his or her traditional IRA and, to the extent that the distribution would be includable in income if not rolled over, the individual may roll it over within sixty days into a qualified pension, profit sharing, or stock bonus plan.[6] After-tax contributions including nondeductible contributions to a traditional IRA may not be rolled over from a traditional IRA into a qualified plan.[7]

The IRS may waive the sixty day rollover requirement if failure to waive it would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to the requirement (Q 3895).[8]

An IRA owner who mixes a rollover contribution from a qualified plan with funds from other sources will forfeit any capital gain or special averaging treatment that otherwise might have been available for the qualified plan money.[9]

A terminated vested employee who rolled over her account balance to an IRA and began receiving substantially equal periodic payments from the IRA was permitted to roll over the remaining IRA account balance back into her employer's plan when she returned to her former job.[10]

1. See IRC Sec. 408A(c)(6)(A).
2. IRC Sec. 402A(c)(3).
3. IRC Secs. 408(d)(3)(G), 408A(a); Treas. Reg. §1.408A-4, A-4.
4. General Explanation of Tax Legislation Enacted in the 104th Congress (JCT-12-96), p. 141 (the Blue Book).
5. IRC Sec. 408(d)(9).
6. IRC Sec. 408(d)(3)(A).
7. IRC Sec. 402(c)(2).
8. IRC Sec. 402(c)(3)(B); Rev. Proc. 2003-16, 2003-1 CB 359.
9. See EGTRRA 2001, Secs. 641(f)(3), 642(c)(2); see Let. Rul. 8433078.
10. Let. Rul. 9818055.

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A surviving spouse who receives a distribution from a qualified plan and rolls it over into a traditional IRA is subject to the same treatment as would be applied to the employee (Q 3893).[1]

Rollover to a Tax Sheltered Annuity

An individual may receive a distribution from his or her traditional IRA and within sixty days roll it over into a tax sheltered annuity to the extent that the distribution would be includable in income if not rolled over.[2] After-tax contributions including nondeductible contributions to a traditional IRA may not be rolled over from a traditional IRA into a Section 403(b) tax sheltered annuity.[3]

The IRS may waive the sixty day rollover requirement if failure to waive it would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to the requirement (Q 3895). In determining whether to grant a waiver, the IRS considers (1) certain errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.2

Rollover to an IRC Section 457 Plan

An individual may receive a distribution from his or her traditional IRA and within sixty days roll it over into an eligible Section 457 governmental plan to the extent that the distribution would be includable in income if not rolled over.[4] The Section 457 plan must agree to separately account for the funds.[5] After-tax contributions including nondeductible contributions to a traditional IRA may not be rolled over from a traditional IRA into an eligible Section 457 governmental plan.[6]

The IRS may waive the sixty day rollover requirement if failure to waive it would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to the requirement (Q 3895).[7]

Rollover to Another IRA

An owner of a traditional IRA other than a SIMPLE IRA during the first two years of participation (Q 3657) may receive a distribution of any amount from it and within sixty days roll that amount, or any part of that amount, over into any other traditional IRA (i.e., a receiving plan).[8] Likewise, an owner of a Roth IRA may receive such a distribution from it and within sixty days roll that amount, or any part of that amount, over into any other Roth IRA.[9] The only

1. IRC Sec. 402(c)(9).
2. IRC Secs. 408(d)(3)(A), 402(c)(8)(B)(vi).
3. IRC Secs. 402(c)(2), 403(b)(8)(B).
4. IRC Secs. 408(d)(3)(A), 402(c)(8)(B)(v).
5. IRC Sec. 402(c)(10).
6. IRC Secs. 402(c)(2), 457(e)(16).
7. IRC Sec. 402(c)(3); Rev. Proc. 2003-16, 2003-1 CB 359.
8. IRC Sec. 408(d)(3).
9. IRC Secs. 408(d)(3), 408A(a), 408A(e).

rollover permitted to a SIMPLE IRA is from another SIMPLE IRA. A Roth IRA generally can be rolled over only to another Roth IRA.

The IRS is authorized to waive the sixty day rollover requirement where failure to waive it would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to the requirement (Q 3895).[1]

The owner, for purposes of these rules, includes a spouse who has made a rollover (Q 3893). The receiving plan may be an existing plan or one newly created, but an endowment contract or an individual retirement plan inherited from a decedent who died after 1983, other than a deceased spouse, may not be used as a receiving individual retirement plan.

The distributing plan or any other eligible retirement plan (Q 3883) may receive any or all of the distribution as a rollover amount.[2] Mixing of funds from different sources in a single traditional IRA will not prevent further rollover to another eligible retirement plan, but it will prevent the owner from preserving any capital gains or special averaging treatment (Q 3862) available on a plan distribution.[3]

Only one rollover from a traditional IRA to any other traditional IRA or from a particular Roth IRA to any other Roth IRA may be made in any one year period.[4] Trustee-to-trustee transfers are not considered rollovers for this purpose. Until recently, the IRS applied this limitation separately to each IRA.[5]

However, the Tax Court disagreed with the IRS' interpretation of the rule and found that each taxpayer is limited to one nontaxable IRA rollover contribution per one-year period, even though the taxpayer may own multiple IRAs and take only a single distribution from each IRA. The Tax Court examined the wording of IRC Section 408(d)(3)(B) and found that the prohibition against multiple nontaxable rollover transactions in a single year was not specific to any particular IRA held by a taxpayer, but instead applied to all IRAs maintained by a taxpayer.[6]

The IRS has since indicated that it will follow the Tax Court's decision in this case.[7] Therefore, the limitation will now be imposed on an aggregate basis, rather than on an IRA-by-IRA basis. The IRS has indicated that it will revise its Publication 590 and begin implementing this new rule no earlier than January 1, 2015.

The one year lookback limitation of IRC Section 408(d)(3)(B) applies only to distributions from an individual retirement plan; a rollover from a qualified plan to an IRA is not counted.[8] Also, a rollover from a traditional IRA to a Roth IRA does not count towards this limit.[9]

1. IRC Sec. 402(c)(3)(B); Rev. Proc. 2003-16, 2003-1 CB 359.
2. See IRC Sec. 402(c)(8)(B).
3. See EGTRRA 2001, Secs. 641(f)(3), 642(c)(2).
4. See IRC Secs. 408(d)(3)(B), 408A(a).
5. See IRS Pub. 590 (2013).
6. Bobrow v. Commissioner, TC Memo 2014-21.
7. Ann. 2014-15, 2014-16 IRB 1.
8. Let. Rul. 8745054.
9. See IRC Sec. 408A(e).

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Payment of an arbitration award, designed to replace wasted IRA assets, into a new individual retirement account was a valid rollover.[1] Likewise, a court-ordered payment of the diminished value of an IRA resulting from the investment company's error was eligible for rollover treatment.[2]

3892. Can a required minimum distribution (RMD) from an IRA be rolled over into another account?

A required minimum distribution from an IRA is not eligible for rollover. If a minimum distribution is required for a calendar year, any amounts distributed during a calendar year from an IRA are first treated as the required minimum distribution for the year.

Planning Point: The portion of a distribution that is a required minimum distribution from an IRA, and so not eligible for rollover, is determined in the same manner as provided for distributions from qualified plans. For example, if a minimum distribution is required under IRC Section 401(a)(9) for a calendar year, an amount distributed during a calendar year from an IRA is treated as a required minimum distribution to the extent that the total required minimum distribution for the year under Section 401(a)(9) for that IRA has not been satisfied.[3]

3893. May a surviving spouse make a rollover contribution?

Yes.

Where any portion of an eligible distribution from a qualified plan is paid to the spouse of a participant after that participant's death, the spouse may make a rollover contribution of all or any part of that portion within sixty days of receipt.[4] The IRS is authorized to waive the sixty day rule under certain circumstances (Q 3895).

A qualified plan, a traditional IRA, a Roth IRA (Q 3617), a tax sheltered annuity, or an eligible Section 457 governmental plan that agrees to separately account for funds received from any eligible retirement plan except another eligible Section 457 governmental plan is treated as an eligible retirement plan with respect to a surviving spouse.[5] In other words, a surviving spouse may roll over an eligible distribution into his or her own plan account, provided the plan accepts rollover contributions.[6]

The other rules applicable to rollovers in general apply to rollovers by a deceased participant's spouse (Q 3883, Q 3884, Q 3887, Q 3890, Q 3895).[7] Thus, unless a spouse elects the direct rollover option, the distribution will be subject to mandatory withholding at 20 percent (Q 3887).

Planning Point: An IRA beneficiary who is a surviving spouse has the option of rolling over a distribution to his or her own IRA. If the surviving spouse exercises the rollover option and is under age 59½, then future distributions from the IRA before the surviving spouse reaches age 59½ will

1. Let. Rul. 8739034.
2. Let. Rul. 8814063.
3. Treas. Reg. §1.408-8, A-4.
4. IRC Sec. 402(c)(9).
5. IRC Secs. 402(c)(9), 402(c)(10).
6. See Treas. Reg. §1.402(c)-2, A-11.
7. IRC Secs. 402(c)(9), 403(a)(4), 403(b)(8).

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be subject to the 10 percent tax, whereas distributions directly from the deceased spouse's IRA would not. The surviving spouse's need for distributions before age 59½ is one factor in the rollover decision. *Martin Silfen, J.D., Brown Brothers, Harriman Trust Co., LLC*.

Because the surviving spouse of an owner of a traditional IRA is not subject to the inherited account rules, the surviving spouse may make rollovers to and from the plan.[1] This generally has held true whether the spouse was the beneficiary designated under the plan or inherited the account as sole beneficiary of the owner's estate.[2]

Furthermore, a proper rollover was considered made by a surviving spouse who, as her deceased husband's executrix, transferred the right to receive the benefits due her husband from his profit sharing plan to herself under the residuary bequest in the husband's will and then transferred this amount into an IRA already established on her behalf.[3]

In a number of private rulings during the 1990s, the IRS stated that if a decedent's IRA or tax sheltered annuity passed through a third party, such as a trust, and then was distributed to the decedent's surviving spouse, the spouse was treated as acquiring the IRA or tax sheltered annuity from the trust rather than from the decedent; thus, no rollover was possible.[4]

The IRS also determined on several occasions that if the trustee had no discretion as to the allocation of IRA proceeds to a trust or the payment of the proceeds directly to the surviving spouse, the surviving spouse would be treated as having acquired the IRA proceeds from the decedent rather than from the trust. In other words, a rollover was possible.[5]

In numerous rulings, the IRS has treated a surviving spouse as having acquired the IRA from the decedent and not the trust where the surviving spouse had the power to revoke the trust.[6]

The preamble to the 2002 final regulations under IRC Section 401(a)(9) (Q 3802) clarifies that if a surviving spouse receives a distribution from a deceased spouse's IRA, the spouse is permitted to roll that distribution over within sixty days into an IRA in the spouse's own name to the extent that the distribution is not a required distribution, regardless of whether or not the spouse is the sole beneficiary of the IRA owner.[7] In other words, it appears that for rollover purposes, the final regulations were intended to put to rest the distinction between trusts that provide discretion to the surviving spouse and those that do not.

The surviving spouse does not receive a stepped up basis with respect to the decedent's plan interest or tax sheltered annuity, as retirement benefits are treated as income in respect of a decedent.[8]

1. See IRC Sec. 408(d)(3)(C).
2. See e.g., Let. Ruls. 9820010, 9502042, 9402023, 8925048.
3. Let. Rul. 9351041.
4. See e.g., Let. Ruls. 9515041, 9427035, 9416045.
5. See e.g., Let. Ruls. 200324059, 9813018, 9649045, 9533042, 9445029.
6. Let. Ruls. 199910067, 9815050, 9721028, 9427035.
7. See TD 8987, 67 Fed. Reg. 18988 (4-17-02).
8. IRC Sec. 691; Treas. Reg. §1.691(a)-1.

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3894. May a surviving non-spouse beneficiary make a rollover contribution?

Yes.

Beginning for distributions in 2008, a non-spouse designated beneficiary of a qualified plan, a tax sheltered annuity, or an eligible Section 457 governmental plan may make a direct rollover into an inherited IRA, including a Roth IRA (Q 3617).[1] The rollover must be made by means of a trustee-to-trustee transfer. The transfer will be treated as an eligible rollover distribution.[2] Distributions to non-spouse beneficiaries prior to 2008 were not eligible rollover distributions.

An inherited IRA created under this provision must remain in the name of the owner of the original retirement account payable to the designated beneficiary. The IRA is subject to required minimum distributions as for any IRA payable to a designated beneficiary (Q 3638).

3895. How is the 60-day time limit on rollovers applied?

Once a distribution eligible for rollover treatment is received by a participant, the participant must make the rollover contribution within sixty days.[3] If more than one distribution is received by an employee from a qualified plan during a taxable year, the sixty day rule applies separately to each distribution.[4]

Planning Point: Required minimum distributions were waived for IRAs and defined contribution plans for 2009. If a person received a RMD for 2009, the person had until the later of the normal 60-day rollover period or November 30, 2009 to complete a rollover of the RMD.

The IRS has the authority to waive the sixty day requirement where failure to waive it would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to the requirement.[5]

The IRS has issued guidelines for requesting a waiver of the sixty day requirement.[6] Under the guidelines, a taxpayer may request a private letter ruling from the IRS waiving a failure to meet the sixty day requirement. The IRS will consider "all relevant facts and circumstances," such as whether financial institutions committed any errors; whether an incomplete rollover was due to death, disability, hospitalization, incarceration, or postal error; how an amount distributed was used by the taxpayer, including whether a check was cashed; and how much time has elapsed since the distribution. The guidelines grant automatic waivers in cases where the failure to timely complete a rollover is "solely due to an error on the part of the financial institution." If the taxpayer followed the institution's required procedures within the sixty day rollover period, and the error is ultimately corrected within one year of the distribution, no waiver request is necessary.

1. Notice 2008-30, 2008-1 CB 638, A-7.
2. IRC Sec. 402(c)(11).
3. IRC Sec. 402(c)(3).
4. Treas. Reg. §1.402(c)-2, A-11.
5. IRC Sec. 402(c)(3)(B).
6. See Rev. Proc. 2003-16, 2003-1 CB 359.

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The IRS has liberally applied the new guidelines, granting waivers for alcohol and drug treatment, blizzards, bank errors, dementia, health problems, hurricanes, mistakes of fact including confusing an IRA distribution for a life insurance or annuity payment, and mistakes of law including not understanding the tax consequences of the distribution.[1] The IRS has denied waivers where a taxpayer used a distribution as a short term loan and made no actual attempt to roll over the distribution within the sixty day limit.[2]

Prior to EGTRRA 2001, no waivers of the sixty day time limit were permitted, even where the failure to meet it was the result of mistake, erroneous advice, the inaction of third parties, or reliance on prior rulings by the IRS itself.[3]

Where a stock certificate representing the participant's distribution was sent by registered mail but the participant was away from home, the sixty day period did not begin until the taxpayer signed the registered mail claim check at the post office and took physical receipt of the stock distribution.[4] Likewise, the sixty day period began on the taxpayer's receipt of a distribution check even though the check had been issued ten months earlier but delivery was delayed because of an incorrect address.[5]

The sixty day period does not include any period during which the amount transferred to the individual is a frozen deposit that cannot be withdrawn because of the bankruptcy or insolvency of the financial institution or any state-imposed requirement based on the bankruptcy or insolvency or threat the bankruptcy or insolvency of institutions in the state. Also, the sixty day period will not be considered to expire any earlier than ten days after the account ceases to be frozen.[6]

The inclusion of a distribution as income is not deferred into another calendar year merely because the sixty day rollover period extends into the succeeding year.[7]

A timely rollover occurred where a corrective bookkeeping entry was made after the sixty day period but, based on the facts of the case; the Tax Court concluded that the transfer itself actually had occurred within the required period.[8]

A letter ruling waived the sixty day rollover period for transfers between IRAs where a financial institution was closed on the sixtieth day, a Sunday, and the rollover was completed on the following day.[9]

3896. May an individual who has attained age 70½ make a rollover?

Although there was considerable confusion on this issue at one time, it now seems clear that rollovers may be made to traditional IRAs as long as the minimum distribution requirements

1. Let. Ruls. 200611038, 200610025, 200606053, 200606052.
2. Let. Ruls. 200544027, 200544030.
3. See e.g., *Orgera v. Comm.*, TC Memo 1995-575; Let. Ruls. 9826036, 9211035, 9145036.
4. Let. Rul. 8804014.
5. Let. Rul. 8833043.
6. IRC Secs. 402(c)(7)(A), 403(a)(4)(B), 403(b)(8)(B), 408(d)(3)(F), 457(e)(16)(B).
7. *Robinson v. Comm.*, TC Memo 1996-517.
8. *Wood v. Comm.*, 93 TC 114 (1989).
9. Let. Rul. 200930052.

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are met (Q 3634 to Q 3647).[1] Rollovers, as well as contributions, may be made to Roth IRAs by individuals who have attained age 70½.[2]

It appears that the same rationale also permits rollovers to qualified plans and Section 403(b) tax sheltered annuities after age 70½ if minimum distribution requirements are met (Q 3802 to Q 3812, Q 3949 to Q 3954).

3897. May a recipient of a distribution roll over the amount into another person's individual retirement plan?

No.[3]

Where a plan participant received a distribution from a qualified retirement plan and, within sixty days, the funds were placed in a traditional IRA held in the participant's wife's name only, but not pursuant to a valid QDRO (Q 3888), the Tax Court found that a valid rollover had not occurred.[4]

1. See Rev. Rul. 82-153, 1982-2 CB 86; Let. Rul. 9534027. But see Let. Rul. 8450068.
2. See IRC Sec. 408A(c)(4).
3. IR-1809, Q&A 17, 5-9-77; IRC Sec. 408(d)(3)(A).
4. *Rodoni v. Comm.*, 105 TC 29 (1995).

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