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Long overdue – IRS finally gives taxpayers partial relief from 60-day rollover pitfalls

*As head of The Commerce Trust Company's East Region tax group, Tom Bassett uncovers helpful strategies and shares his perspective on preparing for next year's taxes.**

The Internal Revenue Service (IRS) doesn't often give us "presents," but a gift horse is always a welcome development.

Late last month, the IRS issued Revenue Procedure 2016-47 – which takes the sting out of missing the usual 60-day deadline you have available to roll over funds from one IRA to another.

Under the previous rules, if you receive funds from an IRA and want to "roll over" those funds to another IRA, you had 60 days to complete the rollover. Missing that deadline could drive harsh consequences – usually that makes the funds taxable to you, plus potentially a 10% "penalty" tax.

The IRS had traditionally required taxpayers seeking relief from that deadline to undergo a lengthy and expensive process of requesting a Private Letter Ruling (PLR). Costs vary, but getting a lawyer to draft a PLR request and successfully argue your case with the IRS could cost upwards of $25,000.

As a result, late 60-day PLR requests were only practical for wealthy retirement account owners where the stakes were really high on mistakes involving large attempted rollovers.

Now the IRS will allow taxpayers to "self-certify" the reason for their missing the deadline – and the new IRA custodian/trustee is directed to rely on that "self-certification," as long as it meets certain requirements.

Your failure to complete the rollover in the 60 days must be due to one of 11 listed facts outside of your control. They include the following:

1. An error was committed by the financial institution receiving the contribution or making the distribution to which the contribution relates;
2. The distribution, having been made in the form of a check, was misplaced and never cashed;
3. The distribution was deposited into and remained in an account that the taxpayer mistakenly thought was an eligible retirement plan;
4. The taxpayer's principal residence was severely damaged;
5. A member of the taxpayer's family died;
6. The taxpayer or a member of the taxpayer's family was seriously ill;
7. The taxpayer was incarcerated;
8. Restrictions were imposed by a foreign country;
9. A postal error occurred;
10. The distribution was made on account of a levy under § 6331 and the proceeds of the levy have been returned to the taxpayer; or
11. The party making the distribution to which the rollover relates delayed providing information that the receiving plan or IRA required to complete the rollover despite the taxpayer's reasonable efforts to obtain the information.

Under the Revenue Procedure, the IRS is not giving you carte blanch to do a late rollover – they reserve the right, under audit, to review your certification. If they discover an error, the IRS can declare the entire attempted rollover invalid. This could result in additional income taxes owed and possibly the 10% penalty tax, plus potentially another penalty for making an excess contribution to the (new) retirement account.

The Revenue Procedure contains other information that needs to be included in the self-certification, but if you fail to deposit the funds into a rollover IRA for one of the 11 reasons listed above, you should contact your tax professional immediately to see if you can take advantage of Revenue Procedure 2016-47. Due to the potential for penalties if you don't meet the criteria, this isn't really a "do it yourself" certification, regardless of what the IRS has called it.

Note that pages 5 and 6 of the Revenue Procedure provide a sample "certification" letter to be completed by the taxpayer. Remember that there can be no prior denial by the IRS for a waiver and you can only do one IRA-to-IRA or Roth IRA-to-Roth IRA 60-day rollover in a 12-month period.

You can get further detail on the 11 different acceptable scenarios in the Revenue Procedure on this IRS website link: https://www.irs.gov/pub/irs-drop/rp-16-47.pdf.

**Always consult with your CPA and professional advisor on matters involving income taxes.*

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