AEP ALERT
TECHNICAL CORNER

John T. Midgett, J.D. AEP®
Midgett & Preti PC
Virginia Beach, VA

Revenue Procedure prescribes relief for 60 day rollover headaches.

Taxable income assessed on a distribution from a qualified retirement plan or Individual Retirement Account ("QRP") can be avoided by rolling over the assets into an eligible retirement account within 60 days of the distribution. In all too common occurrences, many individuals miss the 60 day deadline and incur unnecessary legal costs for application of a waiver of the 60 day deadline by the Internal Revenue Service.

Under Revenue Procedure 2016-47, the 60 day rollover waiver process has been significantly simplified. Under this procedure, taxpayers are permitted to certify to the administrator of the retirement plan that the delay in the 60 day rollover was caused by one of 11 reasons. The eligible reasons for relief for missing the 60 day deadline are:

1. Error committed by the financial institution receiving or making the contribution;
2. The distribution 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 qualified 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 an IRS levy and the levy proceeds were returned to the taxpayer; or
11. Retirement plan that made the distribution delayed providing information that was needed to complete the rollover despite the taxpayer's reasonable efforts to obtain that information.

Based upon this self-certification, the taxpayer and administrator of the QRP will proceed as if the late rollover had been a valid rollover within the 60 day period. Under Rev. Proc. 2016-47, the IRS reserves the right to investigate and reverse the outcome if it concludes that the actual facts do not fit within one of the prescribed 11 situations.

According to leading commentator, Christopher Hoyt, "when planning a transfer of assets from one retirement plan account to another, it is usually better to structure the transaction as a trustee-to-trustee transfer rather than a 60 day rollover." With a trustee-to-trustee transfer, which Professor Hoyt refers to as a "direct rollover", one completes forms with a new QRP administrator and the new administrator contacts the existing QRP administrator to arrange for the deposit of the assets into the new QRP with the new administrator.

Unlike a direct rollover, with a 60 day rollover a check is issued from the QRP directly to the account owner. It is not uncommon for the account owner to deposit this check with non-retirement funds, in effect co-mingling assets. Within 60 days of the initial distribution, the owner writes a check and deposits the appropriate amount into a new QRP to complete a rollover. This avoids taxation on the distribution. It also avoids a ten percent early withdrawal penalty if the initial distribution is received from a QRP before the owner obtains the age of 59½.

There are three basic reasons why a trustee-to-trustee transfer is preferred over a 60 day rollover:

1. There is no income tax withholding on a trustee-to-trustee transfer versus a mandatory 20% withholding on distributions from a QRP (IRC Section 3405(c)(1));

2. A taxpayer is limited to a single 60 day rollover per year. A second rollover within a 12 month period will result in taxable income and potentially a 10% early withdrawal penalty, whereas there is no limit on the number of trustee-to-trustee transfers that may be undertaken in a calendar year; and

3. Unlike a 60 day rollover, a trustee-to-trustee transfer eliminates the risk of triggering taxable income because of an inadvertent time delay in completing the rollover.

Prior to the adoption of Rev. Proc. 2016-47, a taxpayer who missed the 60 day rollover deadline could apply for a waiver if they could demonstrate that it would be against equity and good conscience to deny the waiver if the delay was caused by events beyond the reasonable control of the individual. A waiver is obtained by requesting an IRS ruling and demonstrating that the delay was caused by circumstances beyond the taxpayer's control (such as illness or natural disasters). The Service automatically approves waivers for delays caused by mistakes made by the financial institution receiving the rollover distribution. *See* Revenue Procedure 2003-16. The waiver procedure is expensive as the IRS fee for a ruling is $10,000.

The new certification process under Rev. Proc. 2016-47 avoids the payment of the $10,000 IRS fee for a rollover ruling request. Unless a retirement plan administrator has actual knowledge that the taxpayer's statement that the delay was caused by one of the 11 stated reasons was fraudulent, the parties, including the QRP administrator, will operate as if the transfer had been a valid rollover within the 60 day period.

The taxpayer must timely deposit the delayed contribution into the rollover QRP as soon as practicable upon discovering the mistake. If the contribution is deposited within 30 days, the timeliness requirement is presumed to be satisfied. The QRP administrator must disclose to the IRS on Form 5498 that a contribution was accepted after the 60 day deadline date. A model letter is provided in Rev. Proc. 2016-47 for the taxpayer to self-certify the reason for missing the 60 day rollover deadline. Self-certification is not available if a previous request for waiver has been denied by the IRS.

Given the nature of many individuals to treat IRA and qualified retirement plan distributions casually; to avoid or fail to seek appropriate assistance; or to fail to comprehend the complicated rollover rules, Revenue Ruling 2016-47 appears to be a very taxpayer friendly procedure and welcome relief from the prior harsh rules surrounding 60 day rollovers under Internal Revenue Code Sections 402(c) and 408(d)(3).

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