

Application of the new IRA 60-day rollover rules

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On March 20, 2014, the IRS issued Announcement 2014-15, which addresses IRA 60-day rollovers. It has changed the landscape with respect to these types of rollovers, but it is not as dramatic as it first appeared. With that said, running afoul of these new rules could be quite expensive, as will be explained below.

As a bit of background, the rule that existed prior to this announcement stated that the 60-day rollover rules applied on an individual IRA account basis. The Tax Court opinion in *Bobrow v. Commissioner*, T.C. Memo 2014-21, held that these rules should apply on an aggregate basis. In other words, the old rule was that a participant could only do a 60-day rollover the same IRA account once per 12-month period. If the participant had more than one IRA account then, more than one could be rolled over in the same 12-month period.

Contrast that with this new and now current rule, which is that an IRA owner may only do one 60-day IRA rollover in any given 12-month period, regardless of the number of IRAs owned. Therefore, if a participant has more than one IRA, only one of them can be rolled over via a 60-day rollover in any 365 day period. With any new rule or regulation, it is instructive to define some terms and look at issues of application.

What is a rollover?

A rollover is a term that is typically used rather generically for any movement of money from one account to another, however, it does have a specific definition. For purposes of this rule, a rollover

is referring to a “60-day” rollover, in which the participant may receive their IRA balance in the form of a check made payable to them (subject to withholding) and subsequently contribute all or part of it to a new IRA within 60 days (amounts not re-deposited will be considered a taxable distribution). If a participant makes a rollover from IRA to another IRA, or Roth IRA to another Roth IRA, these provisions apply.

What does this rule not apply to?

A trustee to trustee transfer, which is also known as a direct transfer, is not covered by this rule. This is, by far, the preferable way to move money from one IRA to another. There is no 60-day limit and there is also no once-per-year requirement to deal with. An IRA owner may make as many of these transfers as they want and may make them any time they want.

Qualified Plan to IRA rollovers and vice versa.

The new rules are for IRA to IRA rollovers, not for qualified plan to IRA, or IRA to qualified plan. For instance, it is permissible for a participant to roll over funds from their 401(k) to an IRA and then perform a 60-day rollover to another IRA within the same 12-month period.

Roth IRA conversions and recharacterizations are not considered as rollovers for the purposes of this rule.

Inherited IRA contracts are not subject to this rule, as they must be made in the form of a trustee to trustee transfer, and are not available for 60-day rollover.

When does the 60-day rollover period begin and end?

The 60-day rollover period begins on the day of receipt. If the distribution is not rolled over within the 60-day time limit, it is taxable in the calendar year of receipt, not in the calendar year of the expiration of the 60-day period. The 60-day period is measured in calendar days. It is important to note that these are not “business” days. If the expiration falls on a weekend or holiday, the 60-day period is not extended to the next business day.

When does the one year period begin and end?

The one year period starts on the date the IRA distribution is received and ends 12 months later, less one day. For instance, if a participant receives a distribution on October 3, 2015 and rolls it over, the 12 month window expires on October 2, 2016. Therefore, if the participant receives another distribution on October 3, 2016, that distribution could be rolled over.

What are the consequences for failing to meet the timeframes?

If the 60-day requirement is not met, the entire transfer is taxable and will be included in income in the year received. For example, if a distribution was received on December 1, 2015 and the participant fails to complete the rollover into another IRA within the 60-day period, the additional income would be included on the 2015 tax return, not on the 2016 return when the 60 days would expire. Further, if the participant is under 59 ½, an additional tax equal to 10% of the rolled amount will be assessed (usually called the 10% penalty).

If a second rollover amount was made within one year of the first, the second and any subsequent rollovers within that period would fail to qualify as non-taxable rollovers and would receive the same tax treatment as would violation of the 60-day rule above.

When are these new rules effective?

These new rules began being enforced on January 1, 2015 and are not retroactive to any rollovers made before that date.



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