Fix Your 60-Day Rollover Mistake! IRS Releases New Guidance

In one fell swoop, the IRS has just saved *thousands* of IRAs from the harsh bite of needless and accelerated taxation. On Wednesday, August 24, 2016, the IRS released Revenue Procedure 2016-47, which allows you to complete a late 60-day rollover of retirement funds using a self-certification.

A 60-day rollover is when an IRA, Roth IRA or plan sends a check payable to you. That check can then be cashed and used for anything that you like. Once you receive the check, you have 60 days to roll the funds over to another retirement account. This makes the distribution a tax-free event.

Prior to the new guidance, the only way to complete a late 60-day rollover was to obtain a successful private letter ruling (PLR) request from the IRS. This had always been a time consuming and expensive process, but it became even more expensive in February when the IRS increased PLR fees for late rollover requests to $10,000. Yes... $10,000! And that was just the IRS fee. On top of that, you'd often need to pay someone to prepare the ruling, which could easily be another $10,000 or more. As a result, late 60-day PLR requests were out of reach – or simply not worth the expense – for all but the very wealthiest of retirement account owners whose mistakes involved large distributions.

Thanks to the new IRS guidance, that problem no longer exists.

If you make a mistake and don't complete a rollover in a timely fashion, you may be able to fix the problem right away and **at no cost!** In many cases, you no longer need to file a PLR and pay a fee to IRS. You can now self-certify that you qualify for a waiver of the 60-day rollover period. The IRS has even provided a form letter for you to use as part of the self-certification process.

There are three conditions that must be met for self-certification:

1. There can be no prior denial by the IRS for a waiver.
2. The reason for the late rollover must be one of 11 reasons listed in the form letter.
3. The funds must be redeposited in an IRA account as soon as practicable "after the reason or reasons no longer prevent the taxpayer from making the contribution." There is a 30-day safe harbor window to meet the "as soon as practicable" guideline.

To self-certify a late 60-day rollover, your delay must be attributable to one of the following:

1. Financial institution made an error.
2. You misplaced your rollover check, and it was never cashed.
3. You deposited your distribution into an account you thought was a retirement account and it remained there until you completed your rollover.
4. Your principal residence was severely damaged.
5. There was a death in your family.
6. You or one of your family members was seriously ill.

7. You were incarcerated (in which case a rollover was probably the least of your concerns!).
8. Restrictions were imposed upon you by a foreign country.
9. A postal error occurred (yes, the old "check's in the mail" excuse).
10. Your distribution was made on account of an IRS levy, and the proceeds of the levy have been returned.
11. Despite reasonable efforts to obtain information, the distributing company did not provide information required by the receiving company.

While the self-certification process is a huge improvement over the old PLR regime – and frankly, one that the IRS probably should have implemented years ago, it's important for people to realize that the self-certification is ***not*** a waiver by IRS. It allows you to report a contribution as a valid rollover, but – **and this is a big but** – the IRS can later audit your return and determine that a waiver was not appropriate. This could leave you liable for the income tax on the distribution, as well as a host of potential penalties. Of course, given the IRS's severely diminished workforce and limited bandwidth, one has to imagine that only a small percentage of returns with late rollovers will be audited.

One crucial piece of information that is missing from the Rev. Proc. and the certification letter is a reminder of the once-per-year rule. You can only do **one** IRA-to-IRA or Roth IRA-to-Roth IRA 60-day rollover in a 12-month period. Any subsequent rollovers are ineligible rollovers and generally create an excess contribution to the receiving account. The new relief provided in Revenue Procedure 2016-47 doesn't change this in any way. The IRS cannot allow you to self-certify a late rollover when a timely rollover would not have been allowed in the first place!

Of course, one way to avoid **all** of this (the 60-day rollover window and the once-per-year rollover rule) is to use direct rollovers and trustee-to-trustee transfers when moving retirement funds instead of using 60-day rollovers. You can move retirement funds an unlimited number of times this way with no time limit on the transaction.