

Waiver of 60-Day Rollover Requirement

Rev. Proc. 2016-47

SECTION 1. PURPOSE

This revenue procedure provides guidance concerning waivers of the 60-day rollover requirement contained in §§ 402(c)(3) and 408(d)(3) of the Internal Revenue Code (“Code”). Specifically, it provides for a self-certification procedure (subject to verification on audit) that may be used by a taxpayer claiming eligibility for a waiver under §§ 402(c)(3)(B) or 408(d)(3)(I) with respect to a rollover into a plan or individual retirement arrangement (“IRA”). It provides that a plan administrator, or an IRA trustee, custodian, or issuer (“IRA trustee”), may rely on the certification in accepting and reporting receipt of a rollover contribution. It also modifies Rev. Proc. 2003-16, 2003-4 I.R.B. 359, by providing that the Internal Revenue Service may grant a waiver during an examination of the taxpayer’s income tax return. An appendix contains a model letter that may be used for self-certification.

SECTION 2. BACKGROUND

.01 Sections 402(c)(3) and 408(d)(3) provide that any amount distributed from a qualified plan or IRA will be excluded from income if it is transferred to an eligible retirement plan no later than the 60th day following the day of receipt. A similar rule applies to § 403(a) annuity plans, § 403(b) tax sheltered annuities, and § 457 eligible governmental plans. See §§ 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B).

.02 Section 401(a)(31) requires that a plan qualified under § 401(a) provide for the direct transfer of eligible rollover distributions. A similar rule applies to § 403(a) annuity plans, § 403(b) tax-sheltered annuities, and § 457 eligible governmental plans. See §§ 403(a)(1), 403(b)(10), and 457(d)(1)(C). Section 1.401(a)(31)-1, Q&A-14, provides examples of situations in which a plan administrator may reasonably conclude that a contribution, whether made via a direct transfer or a 60-day rollover, is a valid rollover contribution to a § 401(a) or 403(a) plan. Several of the examples illustrate circumstances under which a plan administrator may rely on certain certifications and documentation that a rollover contribution that is not a direct transfer is being made no later than 60 days following receipt.

.03 An IRA trustee reports a rollover contribution received during a year on a Form 5498, *IRA Contribution Information*, for that year.

.04 Sections 402(c)(3)(B) and 408(d)(3)(I) provide that the Secretary may waive the 60-day rollover requirement “where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.”

.05 Under §§ 7508 and 7508A, the time for making a rollover may be postponed in

the event of service in a combat zone or in the case of a Presidentially declared disaster or a terroristic or military action. See § 301.7508-1 and Rev. Proc. 2007-56, 2007-34 I.R.B. 388.

.06 Rev. Proc. 2003-16 establishes a letter-ruling procedure for taxpayers to apply to the IRS for a waiver of the 60-day rollover requirement under § 402(c)(3)(B) or 408(d)(3)(I). Section 3.03 of Rev. Proc. 2003-16 also provides for automatic approval for a waiver of the 60-day rollover requirement in certain circumstances in which a rollover is not made timely due to an error on the part of a financial institution.

.07 Rev. Proc. 2016-4, 2016-1 I.R.B. 142, provides the procedures for issuing letter rulings on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

SECTION 3. SELF-CERTIFICATION

.01 *Written self-certification.* A taxpayer may make a written certification to a plan administrator or an IRA trustee that a contribution satisfies the conditions in Section 3.02 of this revenue procedure. This self-certification has the effects described in Section 3.04 of this revenue procedure. Taxpayers may make the certification by using the model letter in the appendix on a word-for-word basis or by using a letter that is substantially similar in all material respects. A copy of the certification should be kept in the taxpayer's files and be available if requested on audit.

.02 *Conditions for self-certification.*

(1) *No prior denial by the IRS.* The IRS must not have previously denied a waiver request with respect to a rollover of all or part of the distribution to which the contribution relates.

(2) *Reason for missing 60-day deadline.* The taxpayer must have missed the 60-day deadline because of the taxpayer's inability to complete a rollover due to one or more of the following reasons:

(a) an error was committed by the financial institution receiving the contribution or making the distribution to which the contribution relates;

(b) the distribution, having been made in the form of a check, was misplaced and never cashed;

(c) the distribution was deposited into and remained in an account that the taxpayer mistakenly thought was an eligible retirement plan;

(d) the taxpayer's principal residence was severely damaged;

(e) a member of the taxpayer's family died;

- (f) the taxpayer or a member of the taxpayer's family was seriously ill;
- (g) the taxpayer was incarcerated;
- (h) restrictions were imposed by a foreign country;
- (i) a postal error occurred;
- (j) the distribution was made on account of a levy under § 6331 and the proceeds of the levy have been returned to the taxpayer; or
- (k) 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.

(3) *Contribution as soon as practicable; 30-day safe harbor.* The contribution must be made to the plan or IRA as soon as practicable after the reason or reasons listed in the preceding paragraph no longer prevent the taxpayer from making the contribution. This requirement is deemed to be satisfied if the contribution is made within 30 days after the reason or reasons no longer prevent the taxpayer from making the contribution.

.03 *Reporting on Form 5498.* The IRS intends to modify the instructions to Form 5498 to require that an IRA trustee that accepts a rollover contribution after the 60-day deadline report that the contribution was accepted after the 60-day deadline.

.04 *Effect of self-certification.*

(1) *Effect on plan administrator or IRA trustee.* For purposes of accepting and reporting a rollover contribution into a plan or IRA, a plan administrator or IRA trustee may rely on a taxpayer's self-certification described in this Section 3 in determining whether the taxpayer has satisfied the conditions for a waiver of the 60-day rollover requirement under § 402(c)(3)(B) or 408(d)(3)(I). However, a plan administrator or an IRA trustee may not rely on the self-certification for other purposes or if the plan administrator or IRA trustee has actual knowledge that is contrary to the self-certification.

(2) *Effect on taxpayer.* A self-certification is not a waiver by the IRS of the 60-day rollover requirement. However, a taxpayer may report the contribution as a valid rollover unless later informed otherwise by the IRS. The IRS, in the course of an examination, may consider whether a taxpayer's contribution meets the requirements for a waiver. For example, the IRS may determine that the requirements for a waiver were not met because of a material misstatement in the self-certification, the reason or reasons claimed by the taxpayer for missing the 60-day deadline did not prevent the taxpayer from completing the rollover within 60 days following receipt, or the taxpayer failed to make the contribution as soon as practicable after the reason or reasons no longer prevented the taxpayer from making the contribution. In such a case, the taxpayer may be subject to

additions to income and penalties, such as the penalty for failure to pay the proper amount of tax under § 6651.

SECTION 4. ADDITIONAL WAIVERS DURING EXAM

In addition to automatic waivers and waivers through application to the IRS under Section 3 of Rev. Proc. 2003-16, the IRS, in the course of examining a taxpayer's individual income tax return, may determine that the taxpayer qualifies for a waiver of the 60-day rollover requirement under § 402(c)(3)(B) or 408(d)(3)(I).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on August 24, 2016.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003-16 is modified by Section 4 of this revenue procedure.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2269.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in Section 3.01. The collection of information relates to a certification by taxpayers wanting a waiver of the 60-day requirement for rollovers of distributions from plans or IRAs. The collections of information are required to obtain a benefit.

The likely recordkeepers are individuals. Estimates of the annualized cost to respondents are not relevant, because each collection of information in this revenue procedure is a one-time collection.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Roger Kuehnle of the Office of Associate Chief Counsel (Tax Exempt and Government Entities).

Appendix

Certification for Late Rollover Contribution

Name
Address
City, State, ZIP Code
Date: _____

Plan Administrator/Financial Institution
Address
City, State, ZIP Code

Dear Sir or Madam:

Pursuant to Internal Revenue Service Revenue Procedure 2016-47, I certify that my contribution of \$ [ENTER AMOUNT] missed the 60-day rollover deadline for the reason(s) listed below under Reasons for Late Contribution. I am making this contribution as soon as practicable after the reason or reasons listed below no longer prevent me from making the contribution. I understand that this certification concerns only the 60-day requirement for a rollover and that, to complete the rollover, I must comply with all other tax law requirements for a valid rollover and with your rollover procedures.

Pursuant to Revenue Procedure 2016-47, unless you have actual knowledge to the contrary, you may rely on this certification to show that I have satisfied the conditions for a waiver of the 60-day rollover requirement for the amount identified above. You may not rely on this certification in determining whether the contribution satisfies other requirements for a valid rollover.

Reasons for Late Contribution

I intended to make the rollover within 60 days after receiving the distribution but was unable to do so for the following reason(s) (check all that apply):

- An error was committed by the financial institution making the distribution or receiving the contribution.
- The distribution was in the form of a check and the check was misplaced and never cashed.
- The distribution was deposited into and remained in an account that I mistakenly thought was a retirement plan or IRA.
- My principal residence was severely damaged.
- One of my family members died.
- I or one of my family members was seriously ill.
- I was incarcerated.
- Restrictions were imposed by a foreign country.
- A postal error occurred.

- ___ The distribution was made on account of an IRS levy and the proceeds of the levy have been returned to me.
- ___ The party making the distribution delayed providing information that the receiving plan or IRA required to complete the rollover despite my reasonable efforts to obtain the information.

Signature

I declare that the representations made in this document are true and that the IRS has not previously denied a request for a waiver of the 60-day rollover requirement with respect to a rollover of all or part of the distribution to which this contribution relates. I understand that in the event I am audited and the IRS does not grant a waiver for this contribution, I may be subject to income and excise taxes, interest, and penalties. If the contribution is made to an IRA, I understand you will be required to report the contribution to the IRS. I also understand that I should retain a copy of this signed certification with my tax records.

Signature: _____