Retirement Assets: Strategies and Solutions for Common (and some not-so-common) Concerns

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I. Social Security

A. Restricted applications

While many generous Social Security strategies, such as "file as a spouse first" were eliminated in 2015, there are still some related strategies.

Typically people file for both their own benefits (based on their own work record) and spousal benefits at the same time and receive whichever is larger. But previous law allowed people who had reached full retirement age to "restrict" the claim on their applications to claim only the spousal benefit (first) while deferring their own retirement, thus enlarging the pot down the road. This was largely phased out except for people who turned 62 by January 1, 2016, who may be able to benefit from the file as a spouse first strategy until they reach full retirement age.

Similarly, the "file and suspend" strategy in which one spouse filed for benefits at full retirement age and then suspend them, allowing the other spouse to claim spousal benefits, is generally no longer available unless the filer is age 66 or older by April 30, 2016.

B. Other interesting Social Security tips

Working for 35 years+. Although you can receive Social Security benefits after working as little as 10 years, your benefit is based on the average of your 35 highest-earning years. If you work fewer than 35 years, each year with no earnings will be factored in at zero.

Working longer. You have the conversation with clients about when they expect to retire. Of course you cannot always influence this. I have professors (and lawyers) for clients who never stop working. While you can begin claiming benefits as young as age 62, if you do, your benefits will be reduced by at least a quarter. The "retirement" age for those born after 1942 has been increasing, but your benefit will be higher if you delay filing for benefits - by as much as132% if you delay retirement until reaching 70.

If you are retired but have dependents under age 19, they are entitled to up to 50% of your benefit. This could happen, for example, if you are widowed or divorced and remarry someone younger with children.

Pay attention to earnings. If you do decide to retire before full retirement age, track any earnings you have and make sure that they don't exceed the allowed limit. If they do, you may end up having a portion of future benefits withheld until you do reach full retirement.

Stop benefit and start again – Within the first 12 months of claiming benefits, you have the right to stop your benefit (essentially withdrawing the application), pay it back (including a spousal benefit) and start collecting benefits again later. This could apply if you become re-employed after you retire or if you inherit money and decide you can afford to delay your filing in order to have a higher benefit check. You would do this by completing Social Security Administration Form 521 entitled "Request for Withdrawal of Application. When you file again later, your benefit will likely be substantially more than it was originally. Early claimers may also choose to suspend their benefit at full retirement age. You don't have to return what you claimed and you can earn delayed retirement credits.

Seek survivors' benefits. You can receive a deceased spouse (or ex-spouse)'s benefit if you are age 60 or older and your survivor benefits are higher than your own benefits would be (but you have to wait until your own full retirement age to get 100% of his or her benefit). Even if your deceased spouse died before filing, you could get up to 100% of his or her benefit. If you are at least 60, remarriage won't make you lose these benefits either. Once you reach age 70, check to see if your benefit based on your own work record is higher, and, if it is, switch.

II. Forgotten Assets?

A. Unclaimed property

The U.S. Department of Labor estimates that tens of thousands of workers fail to claim or rollover $850M in 401(k) retirement plan assets when they change jobs. Some of this relates to deceased employees who failed to claim pension benefits relating to employment that ended well before death.

B. Locating "old" retirement assets

There is a National Registry of Unclaimed Retirement Benefits that matches former employers with past employees who have abandoned retirement account balances. There is no fee to view the results.
www.unclaimedretirementbenefits.com

Sometimes, former employees of bankrupt companies are unable to locate their 401(k) accounts because the bankrupt company failed to provide for the administration of the 401(k) plan assets after operations ceased. The Employee Benefits Security Administration of the U.S. Department of Labor is required to identify a new fiduciary for these plans before assets can be released. The U.S. Department of Labor maintains a record of plans that are in the process of being terminated or have been abandoned.
www.askebsa.dol.gove/AbandonedPlanSearch/

The Pension Benefit Guaranty Corporation is a Federal agency that insures private sector pensions and maintains a database of pension plans trusteed by the agency. www.pbgc.gov

Contact the former employer and ask that the employer check plan records. If necessary, look online for corporate mergers. Check old statements for contact information for the plan administrator.

Search for Form 5500 online for employer filings.

III. 60-day Rollover Mistakes and Fixes

A. The 60-day rollover rules

The use of the term "rollover" in this section III of the materials refers to a retirement plan distribution that is not included in anyone's gross income if rolled into an eligible retirement plan or IRA.

IRC §408(d)(1) provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee.

IRC §408(d)(3) provides the rules applicable to IRA rollovers.

In particular, IRC §408(d)(3)(A) provides that §408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual whose benefit the IRA is maintained if (i) the entire amount received (including money or any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money or any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to §408(d)(3)).

IRC §408(d)(3)(B) provides that §408(d)(3) does not apply to any amount described in §408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receive such individual received any other amount described in IRC §408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of §408(d)(3). Otherwise known as the "one-rollover-per-year limitation."

B. Waiver of rollover requirement – mental condition of taxpayer

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 provides that the Service will issue a ruling waiving the 60-day rollover requirement in cases 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 taxpayer. In determining whether to grant a waiver of the 60-day rollover requirement pursuant to IRC §408(d)(3)(I), the Service will consider all relevant facts and circumstances, including...(2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error.

Private Letter Ruling 201647014 (11/18/16). The IRS waived the 60-day rollover requirement where the taxpayer's failure to timely roll over funds was due to his cognitive impairment that prevented him from understanding implications of depositing his IRA funds into his non-IRA account. The taxpayer had a cognitive impairment beginning 5 years prior to the transaction causing the distribution of gross income. He submitted supporting medical documentation of his condition.

BUT the taxpayer in this PLR had another important problem and that was that he attempted to do two rollovers from his IRA within the same year. Because the second amount was withdrawn within 1 year of the first, the second amount could not be rolled over into an IRA. This known as the *Bobrow* problem, stemming from the tax court case of *Bobrow v. Comm'r,* T.C. Memo 2014-21 (T.C. 2014) which is discussed below.

C. Revenue Procedure 2016-47 (August 24, 2016)

A 60-day rollover typically occurs when an IRA, Roth IRA or retirement plan sends a check payable to the account owner or plan participant and the money is rolled over to another IRA or retirement plan within 60 days of the distribution in order to avoid income taxation on the distribution.

As we know from all of the Private Letter Rulings (PLRs) out there about late rollovers, there are *many* things that seem to get in the way of a timely rollover.

In August 2016, the IRS released Rev. Proc. 2016-47 which allows a taxpayer to complete a late 60-day rollover of retirement funds using a self-certification.

Prior to Rev. Proc. 2016-47, the only way to complete a late 60-day rollover was to obtain a successful PLR. As we also know, PLR requests are expensive, with generally a $10,000 filing fee alone for this type of request. So often, it is (or was) not worth the cost to request the PLR. The taxpayer was better off financially just paying the income tax, unless it was a very large distribution.

Under Rev. Proc. 2016-47, the taxpayer can self-certify that s/he qualifies for a waiver of the 60-day rollover period.

There are <u>three (3) conditions</u> that must be met for the self-certification.

(1) 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) The reason for missing the 60-day deadline must be one of the following:

(a) Financial institution error relating to the contribution or distribution;
(b) Misplaced the distribution check and it was never cashed;
(c) Mistaken belief that the rollover contribution was deposited into an eligible retirement account;
(d) Taxpayer's principal residence was severely damaged;
(e) A member of the taxpayer's family died;
(f) The taxpayer or a family members was seriously ill;
(g) The taxpayer was incarcerated;
(h) Restrictions were imposed upon taxpayer by a foreign country;
(i) A postal error occurred;
(j) The distribution was made on account of an IRS levy and the proceeds of the levy have been returned;
(k) The party making the distribution delayed providing information required by the receiving institution.

(3) The distribution must be redeposited in an IRA account as soon as practicable after the reason or reasons for the delay 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 for delay no longer prevent the taxpayer from making the contribution.

Bonus: The IRS has provided a form letter for taxpayers to use as part of the self-certification process. See Exhibit A.

What is the effect of self-certification?

- It allows a plan administrator or IRA custodian receiving a rollover contribution to rely on the taxpayer's self-certification in determining whether the taxpayer has satisfied the conditions for a waiver of the 60-day rollover requirement.

- As to the taxpayer, self-certification is not a waiver. It allows the taxpayer to report to the IRS that the rollover is valid BUT the IRS may upon later examination consider whether the requirements were met. This may involve an analysis of the factual information reported by the taxpayer.

TIP: A better way than the 60-day rollover to move retirement funds between retirement accounts is to do a trustee-to-trustee transfer. A retirement account owner/participant can move retirement funds an unlimited number of times this way with no time limit on the transaction.

D. The one-rollover-per-year limitation - Internal Revenue Bulletin: 2014-48 and the *Bobrow* case

The Rules

IRC §408(d)(3)(B) limits a taxpayer from performing more than one nontaxable rollover in a one-year period with regard to IRAs and individual retirement annuities. Specifically, IRC §408(d)(3)(B) provides:

> This paragraph [regarding tax-free rollovers] does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

The reference to subparagraph (A)(i) is the amount that is nontaxable due to a 60-day rollover.

The case - *Bobrow v. Comm'r,* T.C. Memo 2014-21 (T.C. 2014).

Facts:

Mr. Bobrow, a tax attorney, had two Fidelity IRAs – a traditional and a rollover. Mrs. Bobrow had a traditional IRA at Fidelity. They also had other accounts with Fidelity. The chronology of their transactions in their Fidelity accounts was as follows:

On April 14 2008, Mr. Bobrow requested and received two distributions from his traditional IRA totaling $65,064.

On June 6, 2008, he requested and received a $65.064 distribution from his rollover IRA.

On June 10, 2008, Mr. Bobrow transferred $65,064 from his individual (non-retirement) account to his traditional IRA.

On July 31, 2008, Mrs. Bobrow requested and received a distribution of $65,064 from her traditional IRA.

On August 4, 2008, Mr. and Mrs. Bobrow transferred $65,064 from their joint account to Mr. Bobrow's rollover IRA

Finally, on September 10, 2008, Mrs. Bobrow transferred $40,000 from the joint account to her traditional IRA.

Essentially, there were three withdrawals (the first two being treated as one by the IRS) and three repayments, one of which was a partial repayment.

The Bobrows argued that IRC §408(d)(3)(B) limitation applied to *each* IRA maintained by a taxpayer.

The tax court disagreed and held that the plain language of IRC §408(d)(3)(B) limits the frequency with which a taxpayer may elect to make a nontaxable rollover contribution and that the limitation is not specific to any single IRA maintained by an individual but applies to all IRAs maintained by the taxpayer.

The Follow-up to *Bobrow*

After *Bobrow* the IRS issued Internal Revenue Bulletin (IRB) 2014-48 addressing the application to IRAs of the one-rollover-per-year limitation of IRC §408(d)(3)(B) and signaling that it was withdrawing proposed regulations that would have conflicted with the *Bobrow* decision.

The Bulletin states:

Section 408(d)(3)(B) provides that an individual is permitted to make only one nontaxable 60-day rollover between IRAs in any 1-year period. As discussed in Announcement 2014–15, Proposed Regulation §1.408–4(b)(4)(ii) and IRS Publication 590, *Individual Retirement Arrangements (IRAs)*, provided that the one-rollover-per-year limitation was applied on an IRA-by-IRA basis. However, the Tax Court in *Bobrow v. Commissioner*, T.C. Memo. 2014–21, held that the limitation applies on an aggregate basis, meaning that an individual could not make more than one nontaxable 60-day rollover within each 1-year period even if the rollovers involved different IRAs. In Announcement 2014–15, the IRS indicated that it anticipated following the interpretation of § 408(d)(3)(B) in *Bobrow,* and accordingly that it would withdraw the proposed regulation and revise Publication 590 to the extent needed to follow that interpretation, but that it would not apply the *Bobrow* interpretation of § 408(d)(3)(B) before 2015. Consistent with Announcement 2014–15, Proposed Regulation § 1.408–4(b)(4)(ii) was withdrawn on July 11, 2014 (79 FR 40031), and subsequent relevant IRS publications (including new Publication 590–A, *Contributions to Individual Retirement Arrangements (IRAs)*) will reflect the *Bobrow* interpretation of § 408(d)(3)(B).

This announcement is intended to address certain concerns that have arisen since the release of Announcement 2014–15. The IRS will apply the *Bobrow* interpretation of § 408(d)(3)(B) for distributions that occur on or after January 1, 2015. This means that an individual receiving an IRA distribution on or after January 1, 2015, cannot roll over any portion of the distribution into an IRA if the individual has received a distribution from any IRA in the preceding 1-year period that was rolled over into an IRA. However, as a transition rule for distributions in 2015, a distribution occurring in 2014 that was rolled over is disregarded for purposes of determining whether a 2015 distribution can be rolled over under § 408(d)(3)(A)(i), provided that the 2015 distribution is from a different IRA that neither made nor received the 2014 distribution. In other words, the *Bobrow* aggregation rule, which takes into account all distributions and rollovers among an individual's IRAs, will apply to distributions from different IRAs only if each of the distributions occurs after 2014.

A rollover from a traditional IRA to a Roth IRA (a "conversion") is not subject to the one-rollover-per-year limitation, and such a rollover is disregarded in applying the one-rollover-per-year limitation to other rollovers. However, a rollover between an individual's Roth IRAs would preclude a separate rollover within the 1-year period between the individual's traditional IRAs, and vice versa. (For purposes of this announcement, the term "traditional IRA" includes a simplified employee pension described in § 408(k) and a SIMPLE IRA described in § 408(p).)

The one-rollover-per-year limitation also does not apply to a rollover to or from a qualified plan (and such a rollover is disregarded in applying the one-rollover-per-year limitation to other rollovers), nor does it apply to trustee-to-trustee transfers. See Rev. Rul. 78–406, 1978–2 C.B. 157. IRA trustees are encouraged to offer IRA owners requesting a distribution for rollover the option of a trustee-to-trustee transfer from one IRA to another IRA. IRA trustees can accomplish a trustee-to-trustee transfer by transferring amounts directly from one IRA to another or by providing the IRA owner with a check made payable to the receiving IRA trustee.

IV. Exceptions to the Penalty for Early Withdrawals

A. The IRC Section 72(t) rules

An additional 10% tax applies to early distributions (before the participant reaches age 59 ½) from a retirement plan or IRA under IRC §72(t)(1). IRC §72(t)(2) lists exceptions to this tax.

B. The *Cheves* Case – No hardship exception

Cheves v. Commissioner, T.C. Memo 2007-22 (1/30/2017)

Facts: The taxpayer, Mr. Cheves lost his job in 2010. He eventually found other work but there was a shortfall in meeting his family budget, so after depleting his personal savings, he began taking withdraws from his retirement accounts. He was under age 59 ½ when these withdrawals were received. Mr. Cheves asked his insurance agent to assist with the withdrawals and to withhold enough funds to cover the IRC §72(t) additional tax triggered by early withdrawals (which is the 10% "penalty" for early withdrawal. The total amount withdrawn totaled $27,721 in 2011. Amounts were withheld from only $3,221 of the withdrawals, not the $24,500 balance. Mr. Cheves was also making payments during this time and believed that he was reimbursing his retirement account for funds withdrawn.

In doing his 2011 taxes, Mr. Cheves relied on two Forms 1099-R as to the amount withdrawn. The forms showed only $12,500 of the amount withdrawn by Mr. Cheves and an amount withdrawn by Mrs. Cheves. who was also under age 59 ½. Mr. Cheves did not verify that the reported amounts were correct. Therefore, he understated his total income by $15,221. Mr. and Mrs. Cheves reported a refund when, according to the IRS, they owed income tax and the 72(t) additional tax on the unreported $15,221 of income, as well as an IRC §6662(a) negligence penalty.

Mr. and Mrs. Cheves didn't dispute the withdrawals, but they argued that they believed that they were entitled to a hardship waiver because the amounts were applied to basic necessities and they contend that they cannot afford to pay the proposed tax and penalties.

Ruling: IRC §408(d) provides several exceptions to the general rule that distributions from an IRA shall be included in gross income (e.g., for rollover contributions, transfers incident to divorce, and distributions for charitable purposes). There is no exception for ordinary living expenses during times of economic hardship. So Mr. and Mrs. Cheves had to pay the tax on the income and the early withdrawal "penalty". The IRS did waive the negligence penalty.

C. Qualifying Exceptions under IRC Section 72(t)

There are exceptions to the section 72(t) penalty for early withdrawals. Distributions that are exempt from the penalty are found under IRC §72(t)(2)(A)-(G):
-distributions for disability of the participant;
-distribution as part of a series of substantially equal periodic payments;
-distribution due to separate from service;
-distributions less than or equal to deductible medical expenses;
-distributions to an unemployed participant for health insurance premiums;
-distributions for qualified higher education expenses of the participant, spouse, their children or grandchildren;
-distributions for first-time purchase of a principal residence by the participant, spouse, their child or grandchild;
-distributions subject to loan agreement;
-distributions made to a beneficiary of an estate of the participant on or after the participant's death;
-distribution to ESOP participant;
-distribution pursuant to Federal tax levy on plan under IRC §6631;
-distribution to alternate payee under QDRO;
-distribution to Federal retiree electing lump sum credit and reduced annuity;
-distribution rolled over into another qualified retirement plan within 60 days
-distribution to correct excess contributions;
-distribution upon conversation from traditional to Roth IRA
-distribution after the participant/IRA owner reaches age 59 ½

V. Required Minimum Distribution Caveats

A. The spouse is special

Many of the caveats to the Required Minimum Distribution rules under IRC §401(a)(9) are spousal related. When it comes to choosing a retirement account beneficiary, there is none more favored than the surviving spouse.

B. The power of the rollover

The spousal rollover refers to the process in which a surviving spouse receives benefits from a deceased participant and rolls them over to another retirement

plan in which the spouse is the owner. This often occurs in a direct rollover similar to a trustee-to-trustee transfer. The benefits to the spousal rollover are:

- The applicable distribution period for a surviving spouse who rolls over is based on the Uniform Life Table because the spouse becomes the owner, so it will be longer than if the spouse was to claim benefits as a beneficiary.
- A new life expectancy period based on the spouse's designated beneficiaries can be used at the spouse's later death if s/he has rolled over.
- If the surviving spouse was younger than the participant, and even if the participant was already taking RMDs, the surviving spouse can delay taking distributions until her required beginning date.
- There is no time limitations on a spousal rollover. While a surviving spouse cannot rollover what would otherwise be a RMD, there is generally nothing preventing the surviving spouse from waiting to rollover the balance of a retirement plan of the deceased participant (but be aware of the plan requirements as to what is treated as RMD, as you don't want the spouse to decide in the last distribution year under the plan to rollover and the rollover be prohibited because the distribution was treated as RMD under the plan).
- For Roth IRAs, a successful spousal rollover prevents RMDs entirely because from the date of the rollover forward, the Roth IRA is treated as if it were established by the surviving spouse and not the original Roth IRA owner. However, once the spouse elects to treat the inherited Roth IRA as her own, the account is no longer a death benefit for purposes of the exceptions to early-withdrawal penalties. But the surviving spouse gets to retain the deceased owner's years of Roth IRA ownership, if longer than her own for purposes of computing the five-year "nonexclusion" period after which qualified distributions can be made (assuming other rules are met).

There are numerous PLRs that permit a surviving spouse to rollover a retirement plan that was payable to a participant's estate of which the surviving spouse was the sole beneficiary.

There are other PLRs that permit a surviving spouse to rollover retirement plan assets payable to a trust of which the surviving spouse is the sole beneficiary.

C. The much younger spouse

If the participant's sole designated beneficiary is his or her more-than-ten-year-younger spouse, the participant's RMDs are computed using the Joint and Last Survivor Table rather than the Uniform Lifetime Table which gives the participant a more generous deferral of RMD. Marital status is determined as of January 1 of each distribution year, so the death of the spouse or a divorce does not impact the RMD for that calendar year. The participant can even marry after his or her Required Beginning Date and use this rule.

D. Both Spouses Die Young

The Required Beginning Date is the date by which a participant or account owner must begin taking Required Minimum Distributions. *Generally*, the participant's RBD is April 1 of the year following the year in which the participant would have reached age 70.5.

The Required Commencement Date refers to the deadline by which a beneficiary must begin taking distributions.

The typical rule is that if a participant dies before his or her Required Beginning Date (RBD) and a surviving spouse is the sole designated beneficiary (either by affirmative beneficiary designation or because the plan specifies that the spouse is the designated beneficiary), then assuming the surviving spouse does not do a spousal rollover or otherwise elect to treat the account as his/her own, the RMDs are computed based on the life expectancy of the surviving spouse under the single life table, recalculated annually *and* the surviving spouse may defer RMDs until the end of the year in which the participant would have reached age 70.5, which would be her Required Commencement Date (RCD). See IRC §401(a)(9)(B)(iv)(II).

But, under this special rule allowing for the deferred RCD, if the surviving spouse dies before that RCD, RMDs for years after the year of the surviving spouse's death will not be based on the surviving spouse's life expectancy, but rather the RMD rules will be applied as if the surviving spouse were the participant (or account owner). In other words, the retirement account assets would need to be distributed over the life expectancy of the surviving spouse's designated beneficiary or under the 5-year rule.

This rule is concerning in a couple of different situations:

(1) Because RMDs are deferred for the surviving spouse-beneficiary until the participant would have reached his RBD (the spouse's "Required Commencement Date"), if the surviving spouse does not "designate" new beneficiaries, whomever the successor beneficiaries are (spouse's estate, etc.), those successor beneficiaries must use the 5-year payout rule if spouse dies before his/her Required Commencement Date.

(2) If there is a trust for the benefit of the surviving spouse to which the retirement assets are payable and the surviving spouse *cannot* designate new beneficiaries, the successor beneficiaries must use the 5-year payout rule. See PLR 2006-44022. In this PLR, a conduit trust for the spouse was the primary beneficiary. For RMD purposes, if the trust is a conduit trust with RMDs paid only to the spouse, then the spouse is treated as the sole designated beneficiary. The negative side of this is that if the participant died before his RBD and the surviving spouse dies before her Required Commencement Date, the successor beneficiaries of the trust are stuck with the 5-year rule.

TIP: When a participant dies young, make sure that the surviving spouse affirmatively designates new beneficiaries.

EXHIBIT A

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: ________________________________