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Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.

(Also, Part I, §§ 402 and 408.)

Rev. Proc. 2003-16

SECTION 1. PURPOSE

This revenue procedure provides guidance on applying to the Internal Revenue Service for a waiver of the 60-day rollover requirement contained in §§ 402(c)(3) and 408(d)(3) of the Internal Revenue Code. It also provides for an automatic waiver under certain circumstances.

SECTION 2. BACKGROUND AND GENERAL INFORMATION

.01 Section 401(a)(31) of the Code requires that a qualified trust 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).) If a distributee fails to elect to have an eligible rollover distribution paid directly to an eligible retirement plan, section 3405(c) provides that the payor of a designated distribution that is an eligible rollover distribution must withhold from such distribution an amount equal to 20 percent of such distribution.

.02 Sections 402(c)(3) and 408(d)(3) of the Code require generally that any amount distributed from a qualified trust or individual retirement plan must be transferred to an eligible retirement plan no later than the 60th day following the day of receipt in order to avoid inclusion in the distributee's gross income. 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).)

.03 Section 72(t) of the Code imposes an additional tax on a distribution from a qualified retirement plan equal to 10-percent of the amount of the distribution included in the distributee's gross income, subject to certain exceptions.

.04 Section 644 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Pub. L. 107-16, amended § 402(c)(3) of the Code and added new § 408(d)(3)(I) to permit the Secretary to 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." The Conference Report to EGTRRA provides examples of situations that may justify waiver of the 60-day rollover requirement, such as during a period in which a distribution in the form of a check was not cashed, or for

errors committed by a financial institution, or in cases of inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error. (H.R. Rep. No. 84, 107th Cong., 1st Sess. 252 (2001).) The amendments made by § 644 of EGTRRA apply to distributions after December 31, 2001.

.05 Under §§ 7508 and 7508A of the Code, 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 Regulations § 301.7508-1 and Rev. Proc. 2002-71, 2002-46 I.R.B. 850.

.06 Rev. Proc. 2003-4, 2003-1 I.R.B. (January 6, 2003), provides the procedures for issuing letter rulings, information letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

.07 Rev. Proc. 2003-8, 2003-1 I.R.B. (January 6, 2003), provides guidance for complying with the user-fee program as it pertains to requests for letter rulings, information letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

SECTION 3. REQUIREMENTS FOR HARDSHIP EXCEPTION TO 60-DAY RULE

.01 Application to the Service. Except as provided in Section 3.03 below, a taxpayer must apply for a hardship exception to the 60-day rollover requirement using the same procedure as that outlined in Rev. Proc. 2003-4 for letter rulings, accompanied by the user fee set forth in Rev. Proc. 2003-8.

.02 Requirements for favorable ruling. 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, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution, other than as described in Section 3.03 below; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

.03 Automatic approval. No application to the Service is required if a financial institution receives funds on behalf of a taxpayer prior to the expiration of the 60-day rollover period, the taxpayer follows all procedures required by the financial institution for depositing the funds into an eligible retirement plan within the 60-day period (including giving instructions to deposit the funds into an eligible retirement plan) and, solely due to an error on the part of the financial institution, the funds are not deposited into an eligible retirement plan within the 60-day rollover period. Automatic approval is

granted only: (1) if the funds are deposited into an eligible retirement plan within 1 year from the beginning of the 60-day rollover period; and (2) if the financial institution had deposited the funds as instructed, it would have been a valid rollover.

.04 General rules. To be eligible for a waiver of the 60-day rollover period, either automatic or through application to the Service, the distribution must have occurred after December 31, 2001, and the rules regarding the amount of money or other property that can be rolled over into an eligible retirement plan within the 60-day rollover period (including § 402(c)(6) relating to sales of distributed property) apply to deposits made pursuant to a waiver of the 60-day rollover period (thus, if a taxpayer received \$6,000 in cash from the taxpayer's IRA, the most that could be deposited into an eligible retirement plan pursuant to a waiver of the 60-day rollover period is \$6,000).

Also, the rules for waiver of the 60-day rollover period in this revenue procedure apply to distributions from an individual retirement plan described in § 408(a) or (b), a plan qualified under § 401(a), a § 403(a) annuity plan, a § 403(b) tax-sheltered annuity and a § 457 eligible governmental plan.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective on January 27, 2003.

DRAFTING INFORMATION

The principal author of this revenue procedure is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday.