

CASEMIS No. RP-112235-16

Waiver of 60-Day Rollover Requirement

Rev. Proc. 2016-XX

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) 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 IRA trustee may rely on the certification in 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 can be used for self-certification.

SECTION 2. BACKGROUND

.01 Sections 402(c)(3) and 408(d)(3) of the Code require generally that any amount distributed from a qualified plan or IRA 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).

.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 is being made no later than 60 days following receipt.

.03 An IRA trustee (or IRA custodian or issuer) 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 IRA trustee (or IRA custodian or issuer) that a contribution satisfies the conditions in Section 3.02 of this revenue procedure. A 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 for the contribution or any part of the distribution that includes the contribution.

(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 an error committed by the financial institution that administers the plan or serves as IRA trustee, custodian or issuer; the distribution, having been made in the form of a check, was misplaced and never cashed; the distribution was deposited into an account that the taxpayer thought was an eligible retirement plan but was not (in this case, the distribution must have remained in the account at all times); severe damage to the taxpayer's principal residence; the death of a family member; serious illness of the taxpayer or family member; the taxpayer's incarceration; restrictions imposed by a foreign country; or postal error.

(3) *Contribution as soon as practicable.* 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, beginning in 2017, that an IRA trustee that, pursuant to a self-certification, accepts a rollover contribution after the 60-day deadline report that the contribution was accepted after the 60-day deadline pursuant to a self-certification.

.04 Effect of self-certification.

(1) *Effect on taxpayer.* A self-certification is not a waiver by the IRS of the 60-day rollover requirement. The IRS, in the course of an examination, may determine that a taxpayer's contribution did not meet the requirements for a waiver because of a material misstatement in the self-certification or because the reason claimed by the taxpayer for missing the 60-day deadline did not prevent the taxpayer from completing the rollover within 60 days following receipt. In such a case, the taxpayer may be subject to income adjustments and penalties under the Code.

(2) *Effect on plan administrator or IRA trustee.* Unless it has actual knowledge to the contrary, solely for determining whether a taxpayer has satisfied the conditions for a waiver of the 60-day requirement under § 402(c)(3) or 408(d)(3)(I) for a valid rollover, for reporting a rollover contribution into a plan or IRA, a plan administrator or an IRA trustee may rely on a taxpayer's self-certification described in this Section 3.

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 **[DATE OF ISSUANCE OF REVENUE PROCEDURE]**.

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-XXXX.

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-XX, 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 I must comply with your procedures to ensure that this contribution meets all other requirements to be a valid rollover.

Pursuant to Revenue Procedure 2016-XX, unless you have actual knowledge to the contrary, you may rely on this certification only 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 to show that 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 committed by the financial institution that administers the plan or serves as IRA trustee, custodian or issuer.
- The distribution was in the form of a check, which was misplaced and never cashed.
- The distribution was deposited into an account that I thought was a retirement plan or IRA but was not (the distribution has remained in the account at all times).
- My principal residence was severely damaged.
- A family member died during the 60-day rollover period.
- I or a family member became seriously ill.
- I became incarcerated during the 60-day rollover period.
- Foreign country restrictions during the 60-day rollover period.
- Postal error (for example, my rollover contribution was not delivered as I had requested).

Signature

I declare that the representations made in this document are true and that the IRS has not previously denied my request for a waiver of the 60-day rollover requirement for this contribution. 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. I also understand that I should retain a copy of this signed certification with my tax records.

Signature: _____