

New IRA Rollover Rules Issued by the IRS

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The Internal Revenue Service (IRS) recently issued an announcement clarifying individual retirement account (IRA) rollover rules. This change in the position stated in IRS Publication 590, Individual Retirement Arrangements, may have an impact on you and how you manage your retirement accounts. As such, the IRS will be rewriting IRS Publication 590 to reflect this change. According to the announcement, it will not be effective before January 1, 2015.

IRS Reverses Long-Standing Position

The Internal Revenue Code currently states that if you receive a distribution from an IRA, you cannot make a tax-free rollover into another IRA if you've already completed a tax-free rollover within the previous 12 months.

Let's first look at the definition of a rollover. A rollover is a transaction where the taxpayer takes constructive receipt of funds from an IRA (other than a SIMPLE IRA in the first 2 years of participation) and then has a maximum of 60 days to put the funds back into an IRA (the same or a different IRA) in order to avoid a taxable distribution. It is important to note that a rollover from an IRA can also be deposited into a qualified plan within the 60-day limit to avoid taxation. It is also important to point out that a rollover from a Roth IRA may generally be made only to another Roth IRA.

Rollovers are different than a direct transfer, where the funds are transferred as a trustee-to-trustee transfer and are transferred directly between the custodians/trustees of the IRAs or employer-sponsored plans involved. The number of direct

transfers is unlimited in any particular time period.

The long-standing position of the IRS, reflected in Publication 590 and proposed regulations, has been that this rule applies separately to each IRA you own. Publication 590 provides the following example:

"You have two traditional IRAs, IRA-1 and IRA-2. You make a tax-free rollover of a distribution from IRA-1 into a new traditional IRA (IRA-3). You cannot, within 1 year of the distribution from IRA-1, make a tax-free rollover of any distribution from either IRA-1 or IRA-3 into another traditional IRA. However, the rollover from IRA-1 into IRA-3 does not prevent you from making a tax-free rollover from IRA-2 into any other traditional IRA. This is because you have not, within the last year, rolled over, tax free, any distribution from IRA-2 or made a tax-free rollover into IRA-2."

The change in the IRS position is that the 1-rollover-per-year rule is now going to apply on a taxpayer basis, rather than on an IRA basis. This follows a recent tax court decision case (*Bobrow v Commissioner*), where the court held that the 1-rollover-per-year rule applies to all of a taxpayer's IRAs in the aggregate, and not to each IRA separately.

Bobrow v Commissioner

In this case, Mr Bobrow (a tax attorney) did the following:

- On April 14, 2008, he withdrew \$65,064 from IRA-1. On June 10, 2008, he repaid the full amount into IRA-1
- On June 6, 2008, he withdrew \$65,064 from IRA-2. On August 4, 2008, he repaid the full amount into IRA-2.

Mr Bobrow completed each roll-

over within 60 days. He made only 1 rollover from each IRA. Therefore, according to Publication 590 and the proposed regulations, this should not have been an issue. However, the IRS served Mr Bobrow with a tax deficiency notice, and the case went to tax court. The IRS argued to the court that Mr Bobrow violated the 1-rollover-per-year rule.

The tax court agreed with the IRS, relying on its previous rulings, the language of the statute, and the legislative history. The court held that regardless of how many IRAs he or she maintains, a taxpayer may make only 1 nontaxable rollover within each 12-month period.

What This Means

For the rest of this year, the old 1-rollover-per-year rule in IRS Publication 590 will apply to any IRA distributions you receive. So if you have a need to use 60-day rollovers to move funds between IRAs, you have only a limited time to do so without regard to the new *Bobrow* interpretation.

Summary

A rollover transaction should only be considered in limited circumstances where there is an actual need for the funds for a short period of time, and it is expected that the entire amount of funds distributed are to be repaid within 60 days. Otherwise, a direct transfer should be the transaction of choice. ●

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