SALISBURY TRUST
WEALTH ADVISORY SERVICES

Rollover rules

Will you be rolling over your 401(k) or other retirement money to an IRA? Or transferring your money from one IRA to another? If so, be aware that the IRS has been taking a very hard line on technicalities.

The 60-day rule

If you receive a distribution from your company plan, you have 60 days to roll it over to an IRA. If you miss the deadline, the distribution becomes taxable, and if you are under age 59-1/2 , you'll be hit with a 10% penalty, too. The same 60-day rule applies if you choose to move money from one IRA to another.

Escape from the rule

Unfortunately, people (and sometimes even financial institutions) make mistakes. In 2002 Congress directed the IRS to carve out some exceptions to the 60-day rule so as to avoid harsh and inappropriate tax consequences.

Some of the examples in the IRS guidance were very specific—errors made by a financial institution and the inability to complete the rollover as a result of death, disability, postal errors and other similar events. One ruling waived the requirement when an individual deposited a distribution check into a savings account in the mistaken belief that the distribution was an insurance death benefit, and it allowed the "late" contribution to be rolled over without tax or penalty. Similarly, the IRS granted relief when a rollover attempt failed because the individual used the wrong form, and the time lapsed for the rollover.

But in the last year or so, the Service has seemed less forgiving. The IRS refused to waive the rule for an individual who received a distribution without any guidance about taxes, withholding and her rollover option from the institution issuing the check. The IRS also refused relief when an individual mistakenly believed that all taxes had been paid on two distributions that he had received and, after learning that more taxes were owed, wanted to do a rollover after the 60 day limit had expired.

"Because the IRS has not been consistent in their rulings," says Natalie Choate, Esq., a noted retirement planning specialist with the Boston law firm, Nutter McClennen & Fish LLP, "it's not always clear what leads the IRS to grant or deny a waiver. Lately some of the results have been harsh."

Avoiding the rule altogether

The 60-day rule needn't be a concern at all, if you don't take your retirement money from your company plan or IRA yourself. You simply arrange for a ***direct*** or ***trustee-to-trustee*** transfer. In both cases, by requesting it, the funds will move from your plan account to an IRA (or from IRA to IRA) without your need to receive the distribution in hand.

When it comes to your company plan, there's another good reason for a direct transfer to an IRA: no withholding tax. Your employer must withhold 20% of your distribution for taxes, but this withholding is not necessary when the IRA trustee receives the money directly.

Is retirement near? Have you been thinking about choosing a new trustee for your IRA funds? Come talk to us. We'll explain how we can make your rollover effortless and tell you about the wide array of investments that we offer our IRA customers.

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