INVESTMENT COMPANY INSTITUTE

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IRS Announces New Procedure for Self-Certifying Waiver of 60-Day Requirement for Rollovers

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TO: PENSION MEMBERS No. 23-16
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 29-16 RE: IRS ANNOUNCES NEW PROCEDURE FOR SELF-CERTIFYING WAIVER OF 60-DAY REQUIREMENT FOR ROLLOVERS

Yesterday, the IRS released Rev. Proc. 2016-47, which describes a new self-certification procedure available for taxpayers seeking a waiver of the 60-day requirement for rollovers. [1] If a distribution from a qualified plan or IRA is paid directly to the plan participant or IRA owner, and the amount is an "eligible rollover distribution," the plan participant or IRA owner may roll over the distribution by depositing the amount into another qualified plan or IRA within 60 days. Generally, until now, a taxpayer who missed the 60-day deadline had to request a private letter ruling in order to receive a waiver of the deadline.

Rev. Proc. 2016-47 allows a taxpayer to self-certify in certain circumstances in order to complete a rollover outside of the 60-day window. [2] The plan administrator or IRA trustee, custodian or issuer may rely on the taxpayer's certification in accepting and reporting [3] the rollover contribution, as long as the plan administrator or trustee does not have actual knowledge that the certification is not accurate.

To be eligible for self-certification, (1) the IRS must not have previously denied a waiver relating to the rollover, (2) the rollover contribution must be made as soon as practicable [4] after the reason for the delay no longer applies, and (3) the deadline must have been missed 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 Internal Revenue Code § 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.

The Rev. Proc. includes a model letter for the self-certification in an appendix. A self-certifying taxpayer must either use the model letter on a word-for-word basis or use a letter that is substantially similar in all material respects. The taxpayer should keep a copy of the self-certification letter in his or her files, to be available if requested on audit.

In addition to the self-certification procedure and waivers by private letter ruling, Rev. Proc. 2016-47 announces that the IRS will now have authority to determine during an examination of a taxpayer's individual income tax return that a waiver of the 60-day requirement will apply.

In the news release regarding the new guidance, the IRS notes that it encourages taxpayers to transfer amounts using direct trustee-to-trustee transfers, rather than using "60-day rollovers."

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endnotes

[1] IRS Rev. Proc. 2016-47 is available at: https://www.irs.gov/pub/irs-drop/rp-16-47.pdf. An IRS news release describing the guidance is available at: https://www.irs.gov/uac/new-procedure-helps-people-making-ira-and-retirement-plan-rollovers.

[2] IRS clarifies that a self-certification does not constitute an actual IRS approved waiver; IRS may review the self-certification in the course of an examination to determine whether a material misstatement was made by the taxpayer.

[3] IRS will require that an IRA trustee that accepts a rollover contribution after the 60-day deadline would report on the Form 5498 that the contribution was accepted after the 60-day deadline.

[4] The IRS provides a safe harbor that a contribution made within 30 days after the reason

for the delay no longer applies is deemed to be made as soon as practicable.

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