

**MEMO# 15531**

January 9, 2003

## **IRS ISSUES REVENUE PROCEDURE ON WAIVER OF 60-DAY ROLLOVER REQUIREMENT**

[15531] January 9, 2003 TO: PENSION MEMBERS No. 2-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 2-03 RE: IRS ISSUES REVENUE PROCEDURE ON WAIVER OF 60-DAY ROLLOVER REQUIREMENT The IRS has issued regulatory guidance on applying for a waiver of the “60-day rollover” requirement under Code sections 402(c)(3) and 408(d)(3).<sup>1</sup> The Revenue Procedure<sup>2</sup> implements section 644 of EGTRRA, which permits the Treasury Department 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.”<sup>3</sup> The Institute had requested the issuance of guidance under this EGTRRA provision to assist participants in determining whether they qualify for a waiver.<sup>4</sup> General Rules and Procedures. The waiver rules in the Revenue Procedure apply to distributions from an individual retirement plan described in section 408(a) or (b), a qualified plan under section 401(a), a section 403(a) annuity plan, a section 403(b) tax-sheltered annuity, and a section 457 eligible governmental plan. To be eligible for the waiver, the distribution must have occurred after December 31, 2001, the effective date of the EGTRRA provision. Additionally, the otherwise applicable rules governing the amount of assets that can be rolled 1 Under the Internal Revenue Code, amounts distributed from a qualified trust or individual retirement plan generally must be transferred to an eligible retirement plan no later than the 60th day following the date of receipt in order to avoid inclusion of the distribution amount in the distributee’s income. 2 While the advanced copy of the Revenue Procedure (attached) is numbered as Revenue Procedure 2003-7, we understand that the final version of the guidance to be printed in the Internal Revenue Bulletin may be designated with a different number. 3 The Conference Report to EGTRRA provides examples of situations that may justify a waiver, such as for military service in a combat zone or during a Presidentially declared disaster, for a period during which the participant has received payment in the form of a check, but has not cashed the check, 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. 4 See Institute Memorandum to Pension Committee No. 73-01 and Pension Operations Advisory Committee No. 71-01, dated November 26, 2001. 2 into an eligible retirement plan within the 60-day rollover period apply to deposits made pursuant to a waiver of the 60-day rule. The Revenue Procedure generally requires that a taxpayer apply to the IRS pursuant to the procedures set forth in Revenue Procedure 2003-4 (relating to the issuance of IRS letter rulings and information letters) to qualify under the hardship exception to the 60-day rollover requirement. The user fees set forth in Revenue Procedure 2003-8 also

apply. Upon application, the IRS will issue a waiver ruling where the failure to waive the requirement would be against equity or good conscience, including casualty, disaster or other events beyond the reasonable control of the taxpayer. In making this determination, all of the relevant facts and circumstances will be considered, including (1) errors committed by a financial institution (other than as described under the automatic approval exception discussed below), (2) the 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 (e.g., where the check was cashed), and (4) the time elapsed since the distribution occurred. Automatic Approval Situation. The Revenue Procedure provides an exception to the formal application process where the 60-day rollover requirement is not met because of a financial institution's error. Specifically, no application to the IRS is required if (1) a financial institution receives funds on behalf of a taxpayer prior to the expiration of the 60-day rollover period, (2) the taxpayer follows all procedures required by the financial institution, and (3) 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 period. Automatic approval is granted, however, only if the funds are deposited into an eligible retirement plan within 1 year from the beginning of the 60-day rollover period, and the rollover would have been valid had the financial institution deposited the funds as instructed. Effective Date. The Revenue Procedure is effective January 27, 2003. Thomas T. Kim Associate Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 15531, or call the ICI Library at (202) 326-8304 and request the attachment for memo 15531. Attachment (in .pdf format)

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