

June 2011

## IRS Declines to Waive 60-Day Rollover Rule for IRA Withdrawal Used as Short-Term Loan

The IRS has recently issued a private ruling which highlights the dangers inherent in using Individual Retirement Account (IRA) funds as a temporary cash source - whether for personal or business purposes.

### General Rule

Adverse tax consequences can flow from an early withdrawal from a traditional IRA. The withdrawal is typically considered a taxable distribution and, therefore, must be included in the IRA owner's gross income for tax purposes in the year of distribution. Furthermore, a taxpayer who has not yet attained age 59½ generally must pay a 10% early withdrawal penalty on the distribution.

### An Exception

An individual may take a withdrawal from a traditional IRA with no immediate income tax or penalty if the entire amount of the withdrawal is redeposited into another IRA within 60 days after receipt of the original distribution. This 60-day rollover deadline is strict although federal tax law provides certain situations in which the 60-day rollover requirement may be waived. These exceptions generally involve events beyond the reasonable control of the taxpayer, such as in the case of a casualty or disaster, and situations where not waiving the 60-day rule would be against equity or good conscience. The IRS looks at several factors in determining whether a waiver may be appropriate. These include:

- The time elapsed since the original distribution,
- The inability to complete the rollover due to death disability, hospitalization, or incarceration, or
- Errors committed by a financial institution.

Despite having the best intentions to redeposit the withdrawn IRA funds into another IRA in a timely manner, taxpayers should be wary of situations that may result in the funds not being available for redeposit into another IRA within the 60-day timeframe.

### Ruling Facts

The taxpayer involved in the IRS's private ruling was age 49 at the time he withdrew funds from his IRA for the purpose of helping his elderly mother purchase a residence. Under the family arrangement, and following the purchase of a residence for the mother, a mortgage was to be secured with the resulting cash to be used to pay back the taxpayer-son and other siblings who contributed to the purchase price of the mother's residence. Despite assurances from the financial institution handling the mortgage, the mortgage wasn't processed - and, therefore, the taxpayer wasn't reimbursed for his withdrawn IRA funds - within the 60-day period required to satisfy the tax law requirements for a qualifying rollover.

### Waiver Denied

The IRS denied granting a waiver to the taxpayer on the basis that he did not qualify for any of the exceptions to the 60-day redeposit requirement. In so finding, the IRS noted that any delays - reasonable or unreasonable - on the part of the financial institution handling the mortgage transaction did not relate to the IRA transaction itself. The IRS determined that the taxpayer essentially used the withdrawn IRA funds to make a short term loan to his mother and assumed the risk that the funds may not be available to be redeposited within the required 60-day timeframe. Accordingly, the taxpayer was subject to both income tax and an early distribution penalty on his withdrawal.

Although a private ruling is applicable only to the taxpayer who requests it, a ruling can indicate how the IRS would rule in similar situations. Please contact us if you are considering withdrawing funds from your IRA for a business purpose or personal need. We can discuss any questions that you may have regarding IRA distributions and the rollover requirements.



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