

The IRA Authority!

IRA & Employer Plan Rules, News & Tips in Plain Language



Mark Your Calendar for These IRA Season Deadlines

Missing deadlines for IRA transactions can result in missed opportunities to take advantage of tax and retirement related benefits. It could also cost clients in the form of IRS assessed penalties. In this issue, we provide reminders of some of the upcoming deadlines, and include background explanations where possible.

August 31: deadline for certain COVID-19 related extensions: -

- The 60-day rollover deadline for 2020 nonRMDs (waived RMDs) was extended to August 31, 2020, if the 60-day period ended August 30, 2020 or earlier.
- The one-per-year IRA-to-IRA rollover rule is waived for rollovers completed by August 31, 2020.
- Nonspouse beneficiaries may not rollover distributions. An exception is made for distributions from beneficiary IRAs, if the rollover is completed by August 31, 2020

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Visit the COVID19 resources page for details about these exceptions and sample letters/newsletters at <https://applebyconsultinginc.com/Covid19>

October 1: Deadline to establish a new SIMPLE IRA

Small business owners can establish a savings incentive match plan for employees of small employers (SIMPLE) IRA plan for this year, if the plan is established by October 1. In general, *establishing* the SIMPLE IRA plan means that the employer completes the documentation required to set-up the SIMPLE IRA plan, and provides the required notification to employees. The financial institution with which the plan will be maintained should be consulted about their documentation requirements. In most cases, the financial institution will provide the business owner with a kit that includes all the required paperwork and notices.

An exception to the deadline applies to businesses which start up after October 1. Under this exception, the SIMPLE IRA must be established as a soon as it is administratively feasible.

October 15: Deadline for completing Recharacterizations

October 15 is the deadline by which recharacterizations of Roth contributions for last year must be completed. We strongly recommend submitting the paperwork to the custodian earlier, to help ensure that the transaction is processed by the deadline.

There have been instances where the paperwork was delivered to the custodian by October 15, but the IRS determined the deadline was not met because the actual transaction was not processed by October 15. **Tip:** *If your client's request was submitted by October 15, but was not processed by then, ask the custodian to process the recharacterization 'as of' October 15 or earlier, to prevent any discrepancies with the IRS. The method by which this 'as of' transaction can be accomplished varies among custodians. For your client, the key is to be able to provide documented proof to the IRS if needed. Note:* Bear in mind that not every custodian is willing to accommodate such a request.

October 31: Deadline for providing trust documentation to IRA custodian for IRAs inherited last year

If a trust meets certain requirements, it is eligible to be treated as a designated beneficiary for distribution purposes. This means that distributions would be permitted to be taken under the life expectancy method, just as if an individual was the designated beneficiary. In such cases, the life expectancy of the oldest beneficiary under the trust is used. A trust that meets these requirements is considered a *qualified trust*.

The requirements for a trust to be considered a 'qualified trust', include providing the trust documentation to the IRA custodian by **October 31 of the year following the year of the IRA owner's death**.

November 1: Deadline for providing summary description (for SIMPLE IRAs) to employees

For every year that an employer intends to continue maintaining a SIMPLE IRA plan, employees must be notified of the opportunity to enter into a salary reduction agreement for the calendar year, or to modify a prior agreement for the SIMPLE IRA Plan, (including reducing the amount subject to this agreement to \$0). This must be provided immediately before the employee's 60-day election period, which is November 2 to December 31.

If applicable, this notification must disclose an employee's ability to select the financial institution that will serve as the custodian of the employee's SIMPLE IRA.

The notification must also include the summary description. The IRA custodian may need to provide the employer with the summary description before the 60-day period – no later than **November 1**, to allow the employer to meet its deadline.

The summary description must include information such as:

- a) The name and address of the employer and the custodian.
- b) The requirements for eligibility for participation.
- c) The benefits provided with respect to the SIMPLE IRA.
- d) The time and method of making employee elections with respect to the SIMPLE IRA.
- e) The procedures for, and effects of, withdrawals (including rollovers) from the SIMPLE IRA.

Employers should check with the IRA custodian to determine the terms of their agreement, as it relates to these requirements.

The employer should also include information about the employer contribution that will be made to employees' SIMPLE IRAs; that is, where the employer will be making a reduced matching contribution or a nonelective contribution in lieu of matching contributions.

December 31: Deadline for separate accounting

With a few exceptions, beneficiaries who are taking distributions under the life expectancy method are allowed to use their own life expectancies. One exception is when there are multiple designated beneficiaries of the same IRA. In this case, each designated beneficiary is required to use the life expectancy of the oldest designated beneficiary, unless separate accounting occurs by December 31 of the year that follows the year in which the IRA owner dies. As such, if you have a client who is one of multiple designated beneficiaries, and she is not the oldest beneficiary; remind her of the importance of segregating her share into a separate account by December 31.

December 31: Deadline for Roth IRA conversions

One of the ways in which a Roth IRA can be funded is by converting funds from other retirement accounts, such as traditional IRAs, SEP IRAs, SIMPLE IRAs, as well as from employer plans, such as 401(k), 403(b) and governmental 457(b) plans. For clients who want to have a conversion done for this year, the amount must leave the account from which the conversion is being done by December 31.

Be sure to notify clients of these deadlines early, to allow them sufficient time to submit their instructions. 🍎

IRS Denies 60-Day Waiver Request: IRA Custodian Not Telling IRA Owner about the 60-Day Rollover Rule Is Not a Valid Excuse for Missing the Deadline

Taxpayers often “borrow” funds from their retirement accounts to fill short-term financial needs, and roll over the amounts within 60 days of receipt. But, as a taxpayer found out in [PLR 202033008](#), IRAs are not designed for loans, and taking one can result in unintended distributions that cannot be repaid to the IRA.

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Taking a distribution from an IRA with the intent of returning (rolling over) the amount so that it is non-taxable is a risky business. Risky because missing the 60-day rollover deadline could result in the amount being included in income, which is the contrary effect of a rollover. The IRS will waive the 60-day deadline under certain qualifying circumstances, such as if the deadline is missed because of an error made by a financial institution. But, as one taxpayer found out in [Private Letter Ruling \(PLR\) 202033008](#)- the IRA custodian not informing him about the 60-day deadline is not a qualifying circumstance.

Background

Amounts held in IRAs and other retirement accounts grow on a tax-deferred basis. This tax-deferred benefit is lost for amounts that are distributed (withdrawn), and such amounts are instead included in the account owner’s income for the year in which the distribution is made. But an exception applies to distribution amounts that are properly rolled over (recontributed to an eligible retirement account). One of the requirements for an amount to be ‘properly rolled over’, is that the rollover must be completed within 60 days of the account owner receiving the distribution.

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The IRS May Waive the 60-Day Deadline

As provided under I.R.C. § 408(d)(3)(I), the IRS has the authority to waive the 60-day deadline, where “...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”.

When determining whether to grant a waiver of the 60-day deadline, the IRS will consider factors such as whether the deadline was missed due to errors committed by a financial institution and the use of the amount distributed. For

example, in the case of payment by check, whether the check was cashed and the funds were in use at the time the rollover was required to be completed.

Requirement for Written Explanation to Recipients Of Distributions Eligible for Rollover Treatment: Notice Of Rollover Rules (IRC § 402(f) Notice)

If a plan administrator receives a request for a distribution from an employer-sponsored retirement plan and the amount is eligible to be rolled over, the plan administrator must provide the distributee with a [written explanation of the rollover rights and the tax and other potential consequences of the distribution or rollover](#). This includes an explanation that the distribution will not be subject to income tax, if the amount is rolled over to an eligible retirement plan within 60 days after the date on which the distributee receives the distribution.

- ✓ This requirement applies to employer-sponsored retirement plans, which are defined benefit plans, defined contribution plans, 403(b) plans and eligible deferred compensation 457(b) plans.
- × It does not apply to any IRAs. Instead, the IRA owner is provided with an IRA Disclosure Statement that includes an explanation of the availability of income-tax free rollovers, when the IRA is established.

THE FACTS OF THE PLR

The following are the highlights of the PLR.

IRA Owner Took IRA Advice from Real Estate Agent

According to PLR 22033008, the IRA owner (let's call him Sorano for the purpose of this article) and his spouse wanted to sell their existing home and purchase a new home. The couple worked with a real estate agent, who advised Sorano to take the money that was needed to purchase the new house from his IRA. The real estate agent assured Sorano that he could "repay the amount back into his IRA at a later time, after the sale of his current residence", but made no mention of the 60-day rollover deadline.

Sorano had no other funds available to make the cash purchase, and followed the advice of his real estate agent, to take a distribution of the amount from his IRA.

While the distribution request form included language explaining that the amount may be taxable, it did not make any reference to whether the amount could be rolled over within 60 days. However, it included language to the effect that the IRA owner agreed to obtain legal and tax advice to make the determination of whether the amount would be taxable.

First Home Sold Too Late

When the first home was eventually sold, the 60-day deadline had already passed. And, for that reason, the IRA custodian refused to accept the amount for rollover.

Stated Reason for Waiver Request

Based on these facts and circumstances, Sorano asked the IRS to waive the 60-day deadline, asserting that his failure to meet the deadline was caused by the failure of the real estate agent and IRA custodian to inform him of the 60-day rollover period.

IRS's Reason for Denying the Request

As mentioned earlier, the IRS will generally waive the 60-day deadline for reasons that include the deadline being missed due to errors committed by a financial institution. However, the IRS determined that this was not a case of 'financial institution error', and denied the waiver request. In their response, the IRS explained that:

- Unlike a qualified plan which is subject to the IRC § 402(f) notice requirement (see above), the Tax Code does not impose such requirements on IRA custodians; and the failure of the realtor and the financial institution to provide this information does not rise to the level of financial institution error.
- The information and documentation submitted to the IRS showed the amount was withdrawn for use as a short-term interest-free loan to purchase a new home, and the check was in fact cashed and used for that purpose. And,
- When Congress enacted the rollover provisions, the intent was to facilitate movement of assets between retirement accounts. Using a distribution as a short-term loan to cover personal expenses is not consistent with such intent.

Unlike a qualified plan which is subject to the IRC § 402(f) notice requirement (see above), the Tax Code does not impose such requirements on IRA custodians; and the failure of the realtor and the financial institution to provide this information does not rise to the level of financial institution error.

IRA Lessons from PLR 202033008

PLR 202033008 provides valuable lessons and insight into the operational and compliance requirements of IRAs, which include the following:

- When it comes to IRAs, much of the responsibility for compliance with rollover rules rests with the IRA owner.
- The IRS is strict about applying the rollover rules; and waivers are granted under narrowly defined exceptions. It is not always easy to meet these exceptions.
- IRA owners should seek IRA advice from trained IRA professionals. This includes advice on how to manage their IRA distributions and rollovers, to avoid unintended and adverse tax consequences. The 60-day deadline is

only one of the many rules that apply. Another is the one-per-12-month IRA-to-IRA rollover rule. Under this rule, this rollover would not have been permitted if the IRA owner had already performed an IRA-to-IRA rollover during the preceding 12 months, even if it was being done within the 60-day period.

Another important point of consideration not mentioned in the PLR, is that the IRS charges a fee of \$10,000 for a PLR request. This means that in addition to the unfavorable ruling which requires the amount to be included in income, the IRA owner is out of pocket for \$10,000 plus any fees paid to the professional whose service was engaged to assist with requesting the PLR. Further, income tax would be owed on any pre-tax amount, plus a 10% early distribution penalty if the IRA owner was under age 59 ½ at the time the distribution was made from the IRA and does not qualify for an exception.

Closing Thoughts

While PLRs are not authoritative, they give a good idea of how the IRS might respond to a case with similar facts and circumstances. And, PLR 202033008 presents an opportunity for others to learn from the mistakes that were made. For advisors, it creates an opportunity to educate clients about the rules that govern their IRAs.

IRA Custodians Can Help

Finally, the PLR demonstrates that there is room for improvement for IRA custodians who do not include more information about the tax consequences of distributions on their distribution request forms. While it is true that they have met their disclosure requirements by providing IRA owners with IRA Disclosure Statements, we all know that almost no one reads the fine print of these contracts, and even for those that do, it is not realistic to expect someone to check their IRA Disclosure Statement every time they want to engage in an IRA transaction. Adding an extra line or two, in a strategic—cannot be missed—place on an IRA distribution form, can help to avoid the negative consequences of an IRA owner being unaware of the tax implications of an IRA distribution.

Reminder: RMDs Waived for 2020

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, waived RMDs for 2020. As a result, retirement account owners and beneficiaries need not take any amount that would have otherwise been RMDs for 2020.

A retirement account owner or spouse beneficiary who already distributed such an amount, may roll over all or a portion of the amount, as long as applicable rules and regulations are met.

This includes meeting the 60-day deadline, unless the individual qualifies for a waiver, and not breaking the one-per-12-month IRA-to-IRA rollover rule. 🍎

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Appleby Retirement Consulting Inc.

253 Silvertop Drive,
Grayson, GA 30017
Telephone: 973-313-9877
Fax: 888-524-3120

help@irapublications.com
www.applebyconsultinginc.com
www.iraeducationcenter.com

Writer: Denise Appleby, MJ, CISP, CRC, CRPS, CRSP, APA

Editor: Marjorie Wellington, MBA

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