Reprinted with permission from the March 7, 2014 issue of The Legal Intelligencer © 2014 ALM Media Properties, LLC

The Legal Intelligencer

thelegalintelligencer.com
http://www.thelegalintelligencer.com/home/id=1202645948094/Tax Court Imposes New Limitation on 60Day IRA Rollovers?mcode=1202615324341&curindex=1

Tax Court Imposes New Limitation on 60-Day IRA Rollovers

Amy Neifeld Shkedy and Rebecca Rosenberger Smolen

In *Bobrow v. Commissioner*, TC Memo 2014-21, by a decision issued Jan. 28, U.S. Tax Court Judge Joseph Nega surprisingly ruled that Internal Revenue Code (IRC) Section 408(d)(3)(B), which allows one tax-free 60-day rollover per year, applies to all of a taxpayer's IRAs, rather than to each IRA separately. This is a noteworthy decision because it directly conflicts with the widely held understanding of the rules applicable to 60-day rollovers by professionals in the industry, based on longstanding guidance on this topic provided to taxpayers in IRS Publication 590.

IRC Section 408(d) governs taxation of distributions from qualified retirement plans and IRAs. The general rule is that any amount distributed out to a taxpayer from his or her retirement plan benefit or IRA would be includible in such taxpayer's gross income (subject to relevant tax basis rules). However, IRC Section 408(d)(3)(A) allows the taxpayer to exclude from gross income any amount distributed from an IRA if the entire amount is subsequently paid into a qualifying IRA, individual retirement annuity, or retirement plan within 60 days of the day on which the taxpayer received the distribution. This 60-day tax-free rollover exception is often referred to as a "rollover contribution." Pursuant to Section 408(d)(3)(B), such exception has always only been allowed once during every 12-month period, beginning on the date a taxpayer withdraws funds from an IRA.

In *Bobrow*, taxpayers (a husband and wife) each received distributions from several IRAs, and, in turn, deposited those distributions into IRAs. The taxpayers did not report any of the IRA distributions as income because, consistent with the IRS guidance in Publication 590, they asserted that they were tax-free rollovers of the distributions received and that the Section 408(d)(3)(B) limitation is specific to each IRA maintained by a taxpayer rather than across all of a taxpayer's IRAs. The Tax Court disagreed, ruling that the one-year 60-day limitation applies, across the board, to all of the taxpayers' IRAs (to each of the husband and wife separately). Accordingly, the Tax Court concluded that not all of the transfers were considered tax-free rollovers since more than one occurred during a 12 month period. Publication 590 is not mentioned in the Tax Court's opinion, so, it's not clear whether or not it was considered by Nega.

The IRS's position and the court's holding in *Bobrow* is entirely inconsistent with the IRS's position espoused in its Publication 590. Publication 590 states that if you make a tax-free rollover of any part of a distribution from a traditional IRA, you cannot, within a one-year period, make a tax-free rollover of any later distribution from that "same" IRA, and you also cannot make a tax-free rollover of any amount distributed, within the same one-year period, from the IRA into which you made the tax-free rollover. The publication gives an example of how this works: In the case of a taxpayer with two traditional IRAs, IRA 1 and IRA 2, that taxpayer makes a tax-free rollover of a distribution from IRA 1 into a new traditional IRA (IRA 3). That taxpayer cannot, within one year of the distribution from IRA 1, make a tax-free rollover of any distribution from either IRA 1 or IRA 3 into another traditional IRA. However, according to the publication, this does not prevent the taxpayer from making a tax-free rollover from IRA 2 into another traditional IRA since, within the last year, there was no tax-free rollover from IRA 2 or made to IRA 2.

Many taxpayers with multiple IRAs previously relied on Publication 590 to take a series of 60-day rollovers from different IRAs, being careful not to subject themselves to the one-year rule (i.e., not taking a distribution from an IRA that either distributed or received a rollover contribution within the preceding 12 months). In light of the Tax Court's ruling in the *Bobrow* case, however, it appears that taxpayers may no longer rely on Publication 590 to treat each IRA separately as it relates to the 60-day tax-free rollover.

When considering 60-day rollovers, it is important to be mindful that this transaction has always only been permissible with respect to the taxpayer who has funded the IRA (or who is the employee "participant" with respect to a qualified retirement plan benefit) and such taxpayer's surviving spouse. Beneficiaries of an inherited IRA (other than a spouse who moves the inherited funds to his or her own IRA) have never been permitted to benefit from the 60-day rollover rules. The reason taxpayers rely on the 60-day rollover exception is generally because of a plan to move an IRA or qualified retirement benefit from one institution or retirement plan to another. However, sometimes a taxpayer may simply be looking to take a short-term loan, of sorts, from an IRA.

For a taxpayer who may not benefit from a 60-day rollover, whether because the one-per-year limit has been exhausted or because the taxpayer is a "non-spousal" beneficiary of an inherited IRA, another method exists for moving the funds from one institution (or retirement plan) to an IRA at another institution. Such a taxpayer may coordinate between the distributing and receiving institution to implement a direct "trustee to trustee" transfer of the funds. While such transfers do not allow the opportunity for a short-term loan (since the taxpayer never directly receives the funds), they do facilitate the movement of funds to an IRA at a different institution without any limitation on how many transfers occur per 12-month period.

Amy Neifeld Shkedy *and* ***Rebecca Rosenberger Smolen*** *are co-founders of the boutique firm Bala Law Group (www.balalaw.com) and concentrate their practices in trust and estate planning and administration.*