The right **ideas**.

The right **results**.

Achieved with the right **firm**.

When Does Once a Year Really Mean Once a Year?

Howard J. Kass, CPA AEP®

One of the more confusing areas of tax law is the area of retirement planning and Individual Retirement Accounts (IRAs). In fact, there are so many nuances to IRAs, we've recently learned that the IRS can't always get it right either!

One of the most asked about and least understood areas of the law concerning IRAs is the set of rules regulating the process of moving money from one IRA to another. When one wishes to move their IRA from one custodian to another, there are two primary means of accomplishing this.

The first (and preferred) method is to initiate what is called a direct trustee to trustee transfer. In that scenario, the IRA owner fills out paperwork directing the trustee of their current IRA to transfer the funds directly to the trustee of another IRA that the owner has already opened with another custodian. In this case, money never passes through the account holder's hands, moving directly from the first trustee to the second trustee. One can transfer IRAs from one custodian to another as frequently as they wish.

The other method for transferring money from one IRA to another is to close the first IRA, receive a check from that IRA custodian and, then, within 60 calendar days, deposit the balance of the IRA that they liquidated into a new IRA. This is called a rollover and there are a number of problems with this method.

First, the 60 calendar day time limit is absolute, regardless of when that 60th day falls, and there are no extensions of time available to make that deposit.

Second, you typically have to reach into your pocket to deposit more money into the new IRA than you received from the old IRA. Why? The custodian of your old IRA was required to withhold federal income tax from the distribution they provided to you. However, in order to avoid paying tax on the portion of the IRA that was withheld for federal tax, you must deposit that amount into your new IRA along with the proceeds you received from the old IRA.

Third, you are only allowed to engage in one rollover in any twelve month period. That is the subject of this article.

In a recent decision, the US Tax Court ruled that the one IRA rollover per year limitation applies to all of an account holder's IRAs, rather than to each IRA account separately. While most pundits would find the one rollover per twelve months that I described earlier to clearly agree with the Tax Court decision, many "experts", including the IRS, believed that the one rollover per year rule applied to each IRA separately. In fact the IRS took that position in the guidance it provided in Publication 590, Individual Retirement Arrangements.

In the court case in question [Bobrow, TC Memo 2014-21 (Tax Ct. 2014)] a taxpayer and his wife both received multiple IRA distributions, all coming from separate accounts, that they intended to roll over into new IRAs following the guidance of Publication 590. The result was that only one of the two distributions that the husband received and subsequently rolled over into new IRAs qualified for tax free rollover treatment, and the wife's single distribution that she subsequently rolled over to a new IRA did not qualify for tax free treatment because the rollover took place on the 61st day – one day too late to qualify.

The bottom line in this court case is that, of three intended rollovers, only one qualified for tax free treatment and the other two were treated as taxable distributions. Following the IRS published guidance, both of the husband's rollovers would have been tax free, but, following the Tax Court decision (which is the correct conclusion), only one qualified.

So, what lessons are there to be drawn in this case? First, the rules laid out in the statute should be followed to the letter. One IRA rollover per twelve month period means one per period. 60 days means 60, not 61. And, the guidance that the IRS publishes in its instructions and publications is not authoritative guidance and cannot be relied upon.

But, lest you feel that there was a terrible affront to fairness and equality wrought in this case, take heart! The IRS has since revised Publication 590 to reflect the position of the Tax Court in the Bobrow decision, and, in Announcement 2014-15, the IRS has provided transitional relief for those who relied on their incorrect guidance as follows: The IRS will not apply the new, stricter interpretation to any rollover that involves a distribution that occurs before 1/1/2015. Specifically, the new regulation on this subject will not be effective before 1/1/2015.

For answers to your questions on this or any tax or financial issue, please contact one of the professionals at Zinner & Co. LLP.