PUBLICATION

How Often Can You Make an IRA Rollover?

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The short answer is that it depends on the type and timing of prior IRA rollovers, as well as which IRA and type of IRA makes the distribution and which type receives the rollover.

A "rollover" occurs when you withdraw cash or other assets from one eligible retirement plan (i.e., an IRA or an employer-sponsored, tax-qualified retirement plan) and contribute all or part of the cash or other assets to another eligible retirement plan.

Under the federal tax laws in the Internal Revenue Code (Code), if an amount is distributed to an individual from an eligible retirement plan and that amount is rolled over into another eligible retirement plan within 60 days, the amount distributed is not currently includable in that individual's income. These are "indirect" rollovers, meaning that the IRA assets do not transfer directly from one IRA custodian or plan trustee to another IRA custodian or plan trustee, but instead the IRA owner or plan participant has access to the funds at some time.

A "direct" rollover occurs when the IRA or plan account holder moves assets directly from one eligible retirement plan to another eligible retirement plan without a receipt of assets by the account holder. If a check made payable only to the custodian of another IRA or to the trustee of a retirement plan is instead delivered to the IRA owner or plan participant, the account holder who receives the check has no legal access to the funds reflected by the check, so a direct rollover will be treated as having occurred when the check is delivered to the payee custodian or trustee, as applicable.

The Code does not generally limit the number of direct rollovers between or among eligible retirement plans. Indirect rollovers between IRAs and retirement plan are also not limited. However, the Code allows only one indirect rollover between IRAs in any 12-month period. The one-year period begins on the date of distribution, rather than the date on which the assets are rolled to another IRA. Any rollover of the unlimited types does not count against the one-per-year limit on indirect IRA to IRA rollovers.

Prior IRS guidance indicated that the one-per-year limitation on IRA to IRA indirect rollovers applied on an IRA by IRA basis. Thus, each IRA could separately be involved in an indirect rollover without affecting the ability of other IRAs of that individual to engage in an indirect rollover. In other words, under the prior IRS guidance, the limit applied to each IRA rather than to each individual.

Why does the IRS care about indirect rollovers but not direct rollovers? In the case of a direct rollover, the IRA owner never has the use of the money. For each indirect rollover, however, the IRA owner can have the use of the money for up to 60 days. By setting up multiple IRAs and making sequential indirect rollovers, an IRA owner can have the use of IRA assets indefinitely. In effect, the IRS views this as loans from the IRA to the IRA owner. Loans from an IRA to the IRA owner are prohibited transactions, resulting in taxation of the IRA owner.

In 2014, the IRS changed its position. Now, effective January 1, 2015, the one-per-year limit on indirect rollovers applies on an aggregate basis to all indirect IRA to IRA rollovers. The limit is applied to the individual, rather than to each IRA of the individual. Thus, an indirect rollover from any IRA to any other IRA will prevent a nontaxable indirect rollover between any IRAs of that person – even different IRAs – for a one-year period.

This change left open the question of how IRA distributions made in 2014 (when the limitation applied on an IRA by IRA basis rather than on an aggregate basis to all IRAs of the individual) will affect an individual's ability to make an indirect IRA to IRA rollover in 2015. The general rule is that for an IRA distribution which occurs *after* 2014, that distribution may not be indirectly rolled to another IRA if *any* indirect rollover distribution was made within the prior 12 months. For an IRA distribution which is made in 2014 and which is indirectly rolled over to another IRA (apparently even if the 2014 distribution is not indirectly rolled into another IRA until 2015), that rollover is disregarded for purposes of the IRA owner's ability to indirectly roll over a 2015 IRA distribution, as long as the IRA which makes the 2015 distribution is not an IRA which either made or received an indirect IRA rollover based upon a 2014 distribution.

A distribution from a traditional IRA to a Roth IRA (including a conversion) does not count against the one-per-year IRA to IRA indirect rollover limit (presumably because taxation of the converted balance will occur so taxation is not avoided), but an indirect rollover from a Roth IRA to a Roth IRA does count against the limit.

A SEP IRA and a SIMPLE IRA are treated as traditional IRAs for purposes of the one-per-year indirect IRA to IRA rollover limit.

Where does this leave the owner of an IRA who wants to roll assets to another IRA? An impermissible indirect IRA to IRA rollover will result in income and excise taxes for the IRA owner. As indicated at the beginning of this Alert, the ability of an IRA owner to make a rollover now depends on the type of rollover (direct or indirect), the timing of the distribution (2014 or 2015), and which type of IRA makes the distribution and which type of IRA receives the rollover (e.g., whether the IRA which is involved in an attempted 2015 indirect rollover was also involved in any indirect rollover within the prior year, whether the rollover is from a traditional IRA to a Roth IRA, etc.). In general, direct IRA to IRA rollovers are preferred because they avoid issues with the rollover limitations, and they never count against the one-per-year indirect rollover limit.

Should you have questions regarding the IRA rollover rules or otherwise wish to discuss any retirement plan issues, please contact your Baker Donelson attorney or a member of our Employee Benefits and Executive Compensation Group.