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RETIREMENT & INSURANCE SERVICES, INC.

Tax Court Says One Tax-Free Rollover per Year Means Just That



Background

The Internal Revenue Code says that if you receive a distribution from an IRA, you can't make a tax-free (60-day) rollover into another IRA if you've already completed a tax-free rollover within the previous 12 months.

The long-standing position of the IRS, reflected in Publication 590 and proposed regulations, is that this rule applies separately to each IRA you own. Publication 590 provides the following example:

"You have two traditional IRAs*, IRA-1 and IRA-2. You make a tax-free rollover of a distribution from IRA-1 into a new traditional IRA (IRA-3). You cannot, within 1 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, the rollover from IRA-1 into IRA-3 does not prevent you from making a tax-free rollover from IRA-2 into any other traditional IRA. This is because you have not, within the last year, rolled over, tax free, any distribution from IRA-2 or made a tax-free rollover into IRA-2."

Very clear. Clear, that is, until earlier this year, when the Tax Court considered the one-rollover-per-year-rule in the case of *Bobrow v. Commissioner*.

Bobrow v. Commissioner

In this case Mr. Bobrow (anecdotally, a tax lawyer) did the following:

- On April 14, 2008, he withdrew \$65,064 from IRA #1. On June 10, 2008, he repaid the full amount into IRA #1.
- On June 6, 2008, he withdrew \$65,064 from IRA #2. On August 4, 2008, he repaid the full amount into IRA #2.

Mr. Bobrow completed each rollover within 60 days. He made only one rollover from each IRA. So, according to Publication 590 and the proposed regulations, this should have been perfectly fine. However, the IRS served Mr. Bobrow with a tax deficiency notice, and the case went to the Tax Court. The IRS argued to the Court that Mr. Bobrow violated the one-rollover-per-year rule.

The Tax Court agreed with the IRS, relying on its previous rulings, the language of the statute, and the legislative history. The Court held that regardless of how many IRAs he or she maintains, a taxpayer may make only one nontaxable rollover within each 12-month period.

Strangely, neither the IRS nor Mr. Bobrow appear to have cited the Service's long-standing contrary position in Publication 590 and the proposed regulations.

So what's the rule now?

It's not clear, but taxpayers who rely on the proposed regulations or Publication 590 to make multiple tax-free rollovers within a 12-month period do so at their own risk. It's hoped that the IRS will clarify its position in the near future.

And don't forget--you can make unlimited direct transfers (as opposed to 60-day rollovers) between IRAs. Direct transfers between IRA trustees and custodians aren't subject to the one-rollover-per-year rule.

*The one-rollover-per-year rule also applies--separately--to your Roth IRAs. Roth conversions don't count

as a rollover for this purpose.

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