ROLLOVERS FROM QUALIFIED RETIREMENT PLANS AND IRAS: A PRIMER

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I. In General

A. 60-Day Rollovers

1. If all or part of an amount qualifying for rollover treatment is transferred to an IRA or another qualified retirement plan, an annuity plan under §403(a), a 403(b) annuity plan, or an eligible 457 plan within 60 days after receipt, the amount will not be includible in the gross income of the recipient for the taxable year in which it is paid. §402(c)(1), (c)(8).

   a. A separate account must be established for transfers from a qualified retirement plan or a §403(b) annuity plan to a §457 plan to ensure that the distributions are identifiable for purposes of the 10% additional income tax on distributions before age 59 1/2 that applies to qualified retirement plans and §403(b) annuities, but not to §457 plans. §402(c)(10)

2. Although it is not necessary that the entire distribution be rolled over, the portion not rolled over will be subject to ordinary income tax.

3. If the distribution includes property, the property or the proceeds from the sale of the property may be rolled over. §402(c)(6)(A).

   a. Any gain or loss realized on the sale of property will not be recognized and the post-distribution gain can be rolled over. §402(c)(6)(B), (D).

   b. However, if the taxpayer retains the property and contributes an equivalent amount of cash to the IRA or qualified retirement plan in its place, that transaction does not qualify as a rollover. Rev. Rul. 87-77, 1987-2 C.B. 115.

4. If part of the distribution is a life insurance policy, the policy may not be rolled into an IRA. §408(a)(3).

5. The maximum amount that may be rolled over is the sum of cash and the fair market value of other property distributed, less any nondeductible employee contributions that are part of the distribution.
a. However, nondeductible employee contributions may be rolled over if the distribution is a direct trustee to trustee transfer to a qualified retirement plan, including an annuity plan under §403(a), a §403(b) annuity, or a §457 eligible deferred compensation plan, and the plan provides for separate accounting of the portion that would have been includible in income and the portion that would not.

(1) The distribution will be treated as consisting first of pre-tax contributions and earnings.

b. Nondeductible employee contributions may also be rolled over to an IRA.

(1) Rollovers of nondeductible employee contributions to an IRA are not subject to the direct trustee to trustee requirement and separate accounting rule.

§402(c)(2).

6. The participant may designate the portion of the property or cash that is attributable to the participant’s nondeductible contributions. §402(c)(6)(C).

a. This rule allows the participant to designate cash as being attributable to his or her nondeductible contributions, allowing him or her to sell the other property without recognizing any gain if the proceeds are then rolled into an IRA. §402(c)(6)(D).

b. If no designation is made, the participant’s nondeductible contributions are allocated to cash and other property on a pro rata basis. §402(c)(6)(C).

B. Failure to Meet the 60-day Requirement

1. The IRS has strictly construed the 60-day rule.

2. The 60-day period commences with the physical receipt of the distribution. PLRs 8833043, 8804014.

3. If more than one distribution is made during the same taxable year, the 60-day period commences on the date on which the last payment was received. PLR 8604092.

4. Generally, no extension will be granted. PLRs 8608049, 8548073.

a. In *Michel v. Comr.*, T.C. Memo 1989-670, the Tax Court upheld the IRS in holding that, although the taxpayer missed the 60-day deadline, a valid IRA was established.
b. As a result, the taxpayer was subject to both ordinary income tax on the distribution plus the penalty for an excess contribution to an IRA.

5. On the other hand, in *Wood v. Comr.*, 93 T.C. 114 (1989), the Tax Court allowed a rollover when the taxpayer had done everything to satisfy the 60-day rule but the account was not properly set up because of a clerical error.

6. The 60-day period does not include any period during which the amount of the distribution is frozen in a financial institution because of the bankruptcy or insolvency of the institution, and the 60-day period will not end earlier than 10 days after the amount ceases to be frozen. §402(c)(7).

7. The IRS has ruled that a participant may use the cash distributed from a plan or IRA for his or her own personal needs during the 60-day period, as long as the cash is redeposited in another plan or IRA within the 60-day period. TAM 9010007.

C. Permitted Waivers of the 60-Day Requirement

1. The IRS may waive the 60-day rollover period if the failure to make such a waiver would be “against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.” §§402(c)(3)(B), 408(d)(3)(I).


   a. Generally, a taxpayer must follow the letter ruling procedures set forth in the annual revenue procedure accompanied by the user fee set forth in the annual revenue procedure providing guidance for user fees.

   b. In determining whether to grant a waiver, the IRS stated that it will consider all relevant facts and circumstances, including:

      (1) Errors committed by a financial institution (other than as described below in the case of automatic waivers);

      (2) Inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error;

      (3) The use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and

      (4) The time elapsed since the distribution occurred.

   c. A ruling request is not required (i.e., the waiver is automatic) if:
A financial institution receives funds on behalf of a taxpayer before the expiration of the 60-day rollover period;

The taxpayer follows all procedures required by the financial institution for depositing the funds into an eligible retirement plan within the 60-day period (including giving instructions to deposit the funds into an eligible retirement plan); and,

Solely due to an error on the part of the financial institution, the funds are not deposited into an eligible retirement plan within the 60-day rollover period.

d. The IRS stated that an automatic waiver is available only:

If the funds are deposited into an eligible retirement plan within one year from the beginning of the 60-day rollover period; and

If the financial institution had deposited the funds as instructed, it would have been a valid rollover.


II. Eligibility for Rollover

A. In General

1. By statute, a distribution qualifies for rollover treatment unless it is:

a. One of a series of periodic payments;

b. A required minimum distribution under §401(a)(9); or

c. A hardship distribution made to an employee after December 31, 2001. §402(c)(4)

2. The regulations also exclude the following distributions from rollover treatment:

a. Elective deferrals (as defined in §402(g)(3)) and employee contributions that, pursuant to rules prescribed by the IRS in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see Regs. §601.601(d)(2)), are returned to the employee (together with the income allocable thereto) in order to comply with the §415 limitations.
b. Corrective distributions of excess deferrals as described in Regs. §1.402(g)-1(e)(3), together with the income allocable to these corrective distributions.

c. Corrective distributions of excess contributions under a qualified cash or deferred arrangement described in Regs. §1.401(k)-2(b)(2) and excess aggregate contributions described in Regs. §1.401(m)-2(b)(2), together with the income allocable to these distributions.

d. Loans that are treated as deemed distributions pursuant to §72(p).

e. Dividends paid on employer securities as described in §404(k).

f. The costs of life insurance coverage (P.S. 58 costs).

g. Prohibited allocations that are treated as deemed distributions pursuant to §409(p).

h. A distribution that is a permissible withdrawal from an eligible automatic contribution arrangement within the meaning of §414(w).

Regs. §1.402(c)-2, Q&A-4.

3. A periodic distribution is one of a series of substantially equal payments over:

   a. The life of the participant or the joint lives of the participant and his or her designated beneficiary; or

   b. Over a period certain equal to the life expectancy of the participant or the joint and last survivor life expectancy of the participant and his or her designated beneficiary; or

   c. Over a period of 10 years or more.

§402(c)(4)(A).

4. A qualified retirement plan must permit a transfer to another qualified plan or IRA, but is not required to accept a transfer from another plan or IRA. §401(a)(31).

a. However, qualified retirement plans have been encouraged to accept rollover contributions from other plans by IRS assurance that accepting such contributions based on reasonable evidence that the distributing plan was qualified will not disqualify the receiving plan if the distributing plan, in fact, turns out not to have been qualified.
b. The Taxpayer Relief Act of 1997, P.L. 105-34, §1509, directed the Treasury to clarify that a determination letter with respect to the transferring plan is not necessary in order for the administrator to conclude the rollover is valid.

(1) As a result, Regs. §1401(a)(31)-1, Q A-14 contains examples where a letter from the administrator of the distributing plan stating that the plan is intended to be a qualified plan is sufficient to prevent an otherwise invalid rollover from disqualifying the receiving plan.

c. Note that a direct transfer avoids the mandatory 20% withholding that applies to an eligible rollover distribution distributed to the participant. §3405(c).

B. Rollovers from IRAs

1. After-tax contributions may not be rolled over from an IRA to a qualified retirement plan, §403(b) annuity, or §457 deferred compensation plan. §408(d)(3).

2. A rollover from one IRA to another IRA or from an IRA to a qualified retirement plan or annuity may not be made if the recipient received a distribution from the same IRA during the one-year period ending on the date of receipt of the second distribution. §408(d)(3)(B)

a. Note that if a participant maintains more than one IRA, the one-year rule applies separately to each IRA.

b. Trustee-to-trustee transfers are not considered rollovers because the participant never has control over the distribution; consequently, direct transfers from one IRA to another IRA may be made as frequently as the participant desires. Rev. Rul. 78-406, 1978-2 C.B. 157.

3. Rollovers and transfers can be made from one Roth IRA to another in, generally, the same manner as for traditional IRAs. §§408A(a), 408(d)(3).

4. Under certain circumstances, rollovers may also be allowed from a traditional IRA to a Roth IRA. §§408A(a), 408(d)(3).

a. Before 2010, such rollovers could only be made if the individual was either a single person or a married person filing a joint tax return and the individual’s or married couple’s modified adjusted gross income did not exceed $100,000.

b. Effective for taxable years beginning after December 31, 2009, the Tax Increase Prevention and Reconciliation Act of 2005 (2005
TIPRA) amended §408A to eliminate the income limits on conversions of traditional IRAs to Roth IRAs.

(1) Thus, taxpayers can make such conversions without regard to their adjusted gross income.

(2) Furthermore, in contrast to prior law, 2005 TIPRA allows married taxpayers filing a separate return to convert amounts in a traditional IRA into a Roth IRA.

5. Upon the occurrence of a traditional-to-Roth IRA rollover, the taxable portion of the traditional IRA distribution is included in the distributee’s gross income. §408A(d)(3).

6. For conversions occurring in 2010, unless the taxpayer elects otherwise, none of the amount includible in gross income as a result of the conversion is includible in gross income in 2010; half of the income resulting from the conversion is includible in gross income in 2011, and half is includible in 2012. §408A(d)(3)(A)(iii).

   a. Income inclusion is accelerated if converted amounts are distributed before 2012.

   b. In that case, the amount included in income in the year of the distribution is increased by the amount distributed, and the amount included in income in 2012 (or 2011 and 2012 in the case of a distribution in 2010) is the lesser of: (1) half of the amount includible in income as a result of the conversion; and (2) the remaining portion of such amount not already included in income. §408A(d)(3)(E)(i).

7. Distributions made after December 31, 2007, from tax-qualified retirement plans, tax-sheltered annuities, and governmental §457 plans may be rolled over directly from such plan into a Roth IRA, subject to the present law rules that apply to rollovers from a traditional IRA into a Roth IRA. §408A(e)

   a. For example, a rollover from a tax-qualified retirement plan into a Roth IRA is includible in gross income (except to the extent it represents a return of after-tax contributions), and the 10% early distribution tax does not apply.

8. The Small Business Lending Fund Act of 2010 permits distributions received after September 27, 2010 from a §401(k) plan, a §403(b) annuity, or a governmental §457 plan to be rolled over to a Roth Account under the plan, provided that the Roth Account is not established solely to accept these rollover contributions. §402A(c)(4).

   a. Any such distributions would be taxable income to the extent they exceeded the participant’s basis.
Also note that the transfer of an IRA to a grantor trust is not a disposition of the IRA. Rev. Proc. 2003-16, 2003-4 I.R.B. 359.

III. Spousal and Nonspousal Rollovers and Qualified Charitable Distributions

A. Spousal Rollovers

1. The surviving spouse of a participant may roll over some or all of a distribution of the decedent’s plan benefit to an IRA, and after 2001, to another qualified plan or qualified annuity. §402(c)(9).

2. A spouse may also elect to treat the deceased spouse’s IRA as his or her own IRA. Regs. §1.408-8, Q&A-5.

3. In addition, a surviving spouse who is the beneficiary of a deceased participant’s benefit from a qualified retirement plan may have an additional option that was not available to other beneficiaries before 2007: if, under the terms of the plan, the spouse is entitled to a lump-sum distribution, the spouse may roll over that distribution into an IRA in the name of the deceased participant for which the spouse is the beneficiary. PLRs 9608042, 9418034.
   a. This option may be more favorable than rolling the lump-sum distribution over to the surviving spouse’s IRA if the deceased participant was younger than the surviving spouse because distributions may be delayed until the participant would have attained age 70 1/2 or if the surviving spouse will be taking distributions prior to reaching age 59 1/2 and would be subject to the 10% premature withdrawal penalty.
   b. The option may be preferable to leaving the balance in the qualified plan if an IRA gives the spouse greater investment and distribution flexibility.

4. A distribution to a participant’s spouse or former spouse who is an alternate payee under a QDRO may be rolled into the spouse’s IRA or qualified retirement plan in which the spouse or former spouse is a participant under the same requirements that apply to a participant or former participant in the distributing plan. §402(e)(1)(B).

5. Before 2007, no recipient other than a spouse of a deceased participant or a spouse or former spouse who is an alternate payee under a QDRO could roll a distribution of a decedent’s benefit into an IRA or another qualified retirement plan, although a federal district court upheld the right of the estate of a decedent to roll over a distribution the decedent received within 60 days of his or her death. Gunther v. U.S., 573 F. Supp. 126 (W.D. Mich. 1982).
a. Prior to 2002, such a spousal rollover was permitted only if made to an IRA.

6. If a decedent’s IRA proceeds pass through a third party, e.g., an estate, and are then distributed to the decedent’s surviving spouse, the spouse will generally be treated as acquiring them from the third party and not from the decedent’s IRA. PLRs 9851050.

a. Thus, the surviving spouse will be ineligible to roll over or transfer the proceeds into her own IRA.

b. A number of private letter rulings permitted a spouse to make a spousal rollover when the benefits were payable to the decedent’s estate and the spouse was the sole beneficiary of the estate. PLRs 8746055, 9623056, 200052045, 200304038, 200324059, 200433026.

c. Other private letter rulings permitted a spousal rollover for benefits payable to a trust that could be revoked by the surviving spouse and that provided that the assets were distributed to the spouse upon revocation. PLRs 8920045, 9813018, 9615043, 9623064, 9820020, 20005240, 200052041, 200127027, 200101038, 200304037, 200323012, 200424011.

7. Distributions from an IRA of a deceased participant to a person other than the participant’s spouse may not be rolled into the person’s own IRA. §408(d)(3)(C).

B. Nonspousal Rollovers

1. For tax years beginning after 2006, under §402(c)(11), if a direct trustee-to-trustee transfer of any portion of a distribution from an eligible retirement plan is made to an individual retirement plan described in §408(a) or 408(b) that is established for the purpose of receiving the distribution on behalf of a designated beneficiary who is a nonspouse beneficiary, the transfer is treated as a direct rollover of an eligible rollover distribution for purposes of §402(c).

a. The IRA of the nonspouse beneficiary is treated as an inherited IRA within the meaning of §408(d)(3)(C).

2. The IRS has ruled that the transfer of an inherited IRA to a grantor trust does not trigger recognition of income. PLR 201116005.


a. According to Notice 2007-7, a nonspousal rollover may be made on behalf of a trust if a beneficiary of the trust is treated as the
designated beneficiary and the trust satisfies the four requirements specified in the regulations dealing with the minimum distribution rules.

(1) These require that the trust must be valid, the trust must be irrevocable at the participant’s death, the beneficiaries entitled to the benefit must be identifiable, and certain documentation requirements must be satisfied.

b. The guidance also makes it clear that a plan is not required to allow a nonspousal rollover.

c. The guidance does not state whether the plan must be amended to allow the nonspousal rollover.

4. The guidance also describes how the minimum distribution rules apply to a nonspousal rollover.

a. The ability to roll over some or all of a benefit and the applicable distribution period depend upon whether the decedent died before or after his or her required beginning date (RBD) and when the nonspousal rollover occurs.

b. If the decedent died before his or her RBD, the entire benefit may be rolled over in the year of the decedent’s death, and the beneficiary must begin receiving distributions based on his or her life expectancy the following year.

(1) In any year after the decedent died, the beneficiary must take the required minimum distribution he or she would have received under the life expectancy method and may then roll the balance into an inherited IRA.

(2) If the beneficiary fails to take a minimum distribution in any of the first four years after the decedent died, he or she may still roll over the balance, but will now be required under the five-year rule to take the entire balance by the end of the fifth year after the decedent died. Treas. Reg. § 54.4974-2, A-7(b).

(3) If the five year rule applies, the entire amount may be rolled over in any of the first four years after the participant’s death, but after the fourth year, no amount may be rolled over.

(4) Even if the five-year rule applied to the benefit under the plan, the nonspouse designated beneficiary may use the life expectancy method if the distribution is made before the end of the calendar year after the calendar year of the participant’s death.
c. If the decedent died after his or her RBD, any remaining minimum distribution the decedent would have been required to take in the year of death must be distributed before the balance can be rolled over.

(1) In any year after the year of the decedent’s death, the beneficiary must receive a distribution from the plan based on his or her life expectancy, determined in the year after the decedent’s death, before rolling the balance into an inherited IRA.

(2) Thereafter, distributions may be made over his or her remaining life expectancy, determined by reducing the life expectancy determined in the year after the decedent’s death by one each year thereafter.

C. Qualified Charitable Distributions

1. The Pension Protection Act of 2006 provided for an exclusion from gross income for otherwise taxable IRA distributions from a traditional or Roth IRA in the case of qualified charitable distributions. §408(d)(8).

a. The exclusion was effective for distributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.


c. The 2010 Tax Relief Act further extended the exclusion to distributions made in 2010 and 2011.

2. The exclusion may not exceed $100,000 per taxpayer per taxable year.

a. In the case of a married couple, the $100,000 limit applies to each spouse that has an IRA. Notice 2007-7, 5 I.R.B. 395, Q&A-34.

3. Qualified charitable distributions are taken into account for purposes of the minimum distribution rules applicable to traditional IRAs to the same extent the distribution would have been taken into account under such rules had the distribution not been directly distributed under that provision. Notice 2007-7, 5 I.R.B. 395, Q&A-42.

4. An IRA does not fail to qualify as an IRA merely because qualified charitable distributions have been made from the IRA.


6. Requirements.
a. A qualified charitable distribution is any distribution from a traditional or Roth IRA directly by the IRA trustee to an organization described in §170(b)(1)(A) (other than a supporting organization described in §509(a)(3) or a donor advised fund (as defined in §4966(d)(2)). §408(d)(8)(B)(i).

(1) A qualified charitable distribution may not be made from an ongoing SEP IRA described in §408(k) nor an ongoing SIMPLE IRA described in § 408(p).

(2) For this purpose, a SEP IRA or a SIMPLE IRA is treated as ongoing if it is maintained under an employer arrangement under which an employer contribution is made for the plan year ending with or within the IRA owner's taxable year in which the charitable contributions would be made.


b. Distributions are eligible for the exclusion only if made on or after the date the IRA owner attains age 70 1/2. §408(d)(8)(B)(ii).

c. The exclusion is available for distributions from an IRA maintained for the benefit of a beneficiary after the death of the IRA owner if the beneficiary has attained age 70 ½ before the distribution is made. Notice 2007-7, 5 I.R.B. 395, Q&A-37.

d. The exclusion applies only if a charitable contribution deduction for the entire distribution otherwise would be allowable, determined without regard to the generally applicable percentage limitations. §408(d)(8)(C).

(1) Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution.

7. Distributions that are excluded from gross income by reason of §408(d)(8) are not taken into account in determining the deduction for charitable contributions under §170. §408(d)(8)(E).

8. If the IRA owner has an IRA that includes nondeductible contributions, a special rule applies in determining the portion of a distribution that is includible in gross income (but for the provision) and thus is eligible for qualified charitable distribution treatment.

a. Under the special rule, the distribution is treated as consisting of amounts that would have been included in income first, up to the
aggregate amount that would be includible in gross income (but for
the provision) if the aggregate balance of all IRAs having the same
owner were distributed during the same year.

b. In determining the amount of subsequent IRA distributions includible
in income, proper adjustments are to be made to reflect the amount
treated as a qualified charitable distribution under the special rule.

§408(d)(8)(D).

9. The following examples illustrate the determination of the portion of an IRA
distribution that is a qualified charitable distribution.

In each example, it is assumed that the requirements for qualified charitable
distribution treatment are otherwise met (e.g., the applicable age requirement
and the requirement that contributions are otherwise deductible) and that no
other IRA distributions occur during the year.

(1) **Example 1:** Individual A has a traditional IRA with a balance
of $100,000, consisting solely of deductible contributions and
earnings. Individual A has no other IRA. The entire IRA
balance is distributed in a distribution to an organization
described in §170(b)(1)(A) (other than an organization
described in §509(a)(3) or a donor advised fund). Under prior
law, the entire distribution of $100,000 would be includible in
Individual A’s income. Accordingly, under §408(d)(8), the
entire distribution of $100,000 is a qualified charitable
distribution. As a result, no amount is included in Individual
A’s income as a result of the distribution and the distribution
is not taken into account in determining the amount of
Individual A’s charitable deduction for the year.

(2) **Example 2:** Individual B has a traditional IRA with a balance
of $100,000, consisting of $20,000 of nondeductible
contributions and $80,000 of deductible contributions and
earnings. Individual B has no other IRA. In a distribution to
an organization described in §170(b)(1)(A) (other than an organization
described in §509(a)(3) or a donor advised fund), $80,000 is distributed from the IRA. Under prior law, a
portion of the distribution from the IRA would be treated as a
nontaxable return of nondeductible contributions. The
nontaxable portion of the distribution would be $16,000,
determined by multiplying the amount of the distribution
($80,000) by the ratio of the nondeductible contributions to
the account balance ($20,000/$100,000). Accordingly, under
prior law, $64,000 of the distribution ($80,000 minus
$16,000) would be includible in Individual B’s income.
Under §408(d)(8), notwithstanding the prior-law tax treatment of IRA distributions, the distribution is treated as consisting of income first, up to the total amount that would be includible in gross income (but for §408(d)(8)) if all amounts were distributed from all IRAs otherwise taken into account in determining the amount of IRA distributions. The total amount that would be includible in income if all amounts were distributed from the IRA is $80,000. Accordingly, under §408(d)(8), the entire $80,000 distributed to the charitable organization is treated as includible in income (before application of the provision) and is a qualified charitable distribution. As a result, no amount is included in Individual B’s income as a result of the distribution and the distribution is not taken into account in determining the amount of Individual B’s charitable deduction for the year. In addition, for purposes of determining the tax treatment of other distributions from the IRA, $20,000 of the amount remaining in the IRA is treated as Individual B’s nondeductible contributions (i.e., not subject to tax upon distribution).