

IRA and Retirement Plan Rollovers: IRS Waivers of the 60-Day Rollover Period

By Vorris J. Blankenship

Vorris Blankenship provides an in-depth discussion of situations in which the IRS will grant a waiver of the 60-day IRA rollover period and allow the taxpayer to avoid the substantial penalties associated with failure to comply with this requirement.

A taxpayer may roll over funds tax-free from one IRA or tax-favored retirement plan to another IRA or plan if, among other things, the taxpayer transfers the funds to the recipient plan or IRA within 60 days after the funds are distributed.¹ For many different reasons, taxpayers often fail to comply with the 60-day requirement. However, relief is potentially available. For distributions after 2001, the IRS may waive the 60-day rollover period where failure to waive it would be “against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control” of the taxpayer.² Taxpayers must generally request a private letter ruling from the IRS to obtain the waiver.³

- actual use of the distributed funds; and
- the time elapsed since the distribution.⁴

The Favorable IRS Letter Rulings

The IRS has issued a relatively large number of private letter rulings dealing with the waiver of the 60-day rollover rule. For example, the IRS issued approximately 100 rulings on the waiver issue during the last six months of 2004. In approximately 90 percent of the rulings, the IRS granted waivers. The following analysis of these favorable rulings (and a few other rulings) helps explain why the results so heavily favor taxpayers.⁵

Financial Institution Errors

Most IRS rulings waiving the 60-day requirement because of financial institution error involve situations where a taxpayer directs an employee of a financial institution to establish an IRA—but the employee instead deposits the taxpayer’s funds into a non-IRA account.⁶ Other waivable errors occur when a taxpayer instructs a financial institution employee to reinvest funds into a type of IRA investment the financial institution does not ordinarily accommodate (e.g., U.S. savings bonds or corporate stock), and the employee erroneously treats the request as a termination of the IRA.⁷ These errors generally are attributable to employee inattention,⁸ inexperience⁹ or inability to remember the taxpayer’s intent.¹⁰

Factors the IRS Will Consider

In deciding whether to waive the 60-day requirement, the IRS has declared it will consider all relevant facts and circumstances, including:

- errors committed by financial institutions;
- death, disability, hospitalization or incarceration;
- restrictions imposed by a foreign country;
- postal errors;

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It is not so clear in some of these favorable rulings, though, that the error was that of the financial institution. A close reading of the rulings indicates that some errors may have been due, at least in part, to the taxpayer's:

- failure to communicate clearly his or her intent to establish an IRA,¹¹
- mistaken assumption that the financial institution employee understood the taxpayer's intent,¹²
- failure to notice he or she was filling out the wrong forms,¹³ or
- failure to notice that he or she received non-IRA documentation for the transaction.¹⁴

In some of these favorable rulings, a third party, *e.g.*, a broker¹⁵ or a former spouse¹⁶ acting on the taxpayer's behalf, failed to direct the financial institution to establish an IRA. The IRS nevertheless provides relief as if it were a financial institution error.

A taxpayer may automatically enjoy a waiver of the 60-day requirement (without obtaining an IRS ruling) if failure to satisfy the requirement for an otherwise valid rollover was due solely to an error of a financial institution. However, within the 60-day period, the taxpayer must have (1) transferred the funds to the financial institution, (2) instructed it to deposit the funds into an IRA or eligible plan, and (3) satisfied the financial institution's procedural requirements. In addition, the financial institution must actually deposit the funds into the IRA or plan within one year from the date of the original IRA or plan distribution.¹⁷

Relying on the automatic waiver in appropriate situations is an attractive way to avoid the time and expense of obtaining a ruling. However, the taxpayer and his tax advisor bear the risk of determining whether the conditions for the automatic waiver are satisfied. If they are not, the absence of a formal request for ruling may preclude judicial review of the waiver issue. (See the discussion of judicial review of waivers later in this article.)

Death, Disability or Illness

The IRS will normally provide a waiver where a taxpayer dies before the expiration of the 60-day rollover period.¹⁸ The IRS will also normally provide a waiver where the taxpayer is afflicted with a serious illness, *e.g.*, leukemia,¹⁹ stroke,²⁰ cancer,²¹ Parkinson's disease,²² heart failure,²³ surgery,²⁴ mental illness,²⁵ *etc.* It appears that even lesser illnesses will warrant a favorable ruling if coupled with extenuating circumstances. For example, the IRS has waived the 60-day rollover period for a "medical condition" or

"health problems" or "mental impairment" where the taxpayer was elderly or hospitalized.²⁶

Death or illness of a family member is also usually sufficient reason for issuance of a waiver. For example, the IRS has issued favorable rulings to taxpayers (1) caring for a terminally ill mother,²⁷ (2) dealing with heart surgery for a spouse,²⁸ or (3) caring for a spouse with leukemia and a daughter suffering a complicated pregnancy.²⁹

Distribution Check Not Cashed

The IRS appears to waive the 60-day rollover rule readily where a trustee or custodian unexpectedly mails a distribution check to a taxpayer who does not receive it because of an erroneous address or because it was lost in the mail.³⁰ In fact, in one unusual ruling, the IRS concluded that the 60-day period did not even begin to run until issuance of a replacement check.³¹ Even where a taxpayer receives and simply retains an uncashed check, the IRS will generally waive the 60-day requirement. For example, the IRS has issued favorable rulings to taxpayers who:

- failed to cash an unrequested distribution check,³²
- failed to return an uncashed check after deciding not to roll it into an unsuitable IRA,³³ or
- stored uncashed checks in their safe deposit box under the erroneous belief there was no time limit for a rollover.³⁴

Misleading or Nonexistent Advice

The IRS has apparently concluded a taxpayer's reliance on incorrect advice is, in the words of the statute, an event "beyond the reasonable control" of the taxpayer.³⁵ Thus, the IRS readily waives the 60-day rule if a financial institution or professional advisor gives a taxpayer erroneous rollover advice, or no advice at all, and the taxpayer is elderly³⁶ or ill,³⁷ or is dealing with the finances of a deceased³⁸ or divorced³⁹ spouse. Nor does the IRS seem reluctant to issue a favorable ruling where a taxpayer is simply misled by his bank, custodian or former employer (without other extenuating circumstances).⁴⁰

In fact, the mere failure of trustees, custodians, or employers to provide information about the possibility of a rollover, or the existence of the 60-day rule, will normally constitute sufficient reason for a waiver.⁴¹ It does not matter that the misinformed person is someone handling the affairs of another taxpayer, *e.g.*, a son or daughter acting for a parent with dementia or Alzheimer's disease.⁴²

Interestingly, the IRS may issue a favorable ruling even where the taxpayer is fully aware of the rollover rules if a responsible party does not inform the taxpayer of collateral consequences of his failure to roll over funds. For example, the IRS issued a favorable ruling waiving the 60-day rule where a taxpayer's former employer did not inform him that failure to roll over funds would result in the loss of his benefits under the company's disability plan.⁴³

Mishandling of Trustee-to-Trustee Rollovers

The IRS has allowed taxpayers to correct intended trustee-to-trustee rollovers (*i.e.*, direct rollovers) where a plan or IRA paid out all or part of the funds to the wrong party and the 60-day rollover period expired. For example, taxpayers have received favorable rulings where a plan or IRA erroneously (1) withheld income tax from a direct rollover,⁴⁴ or (2) distributed rollover funds or property to the taxpayer rather than transferring them directly to the intended IRA.⁴⁵ In one such ruling, the IRS even gave the 60-day waiver to the personal representative of a deceased taxpayer who had attempted the direct rollover.⁴⁶

Casualty or Disaster

The waiver statutes specifically identify casualty and disaster as events justifying the issuance of a waiver of the 60-day rule.⁴⁷ Thus, the IRS granted a waiver where the taxpayer unexpectedly received a rollover check during the aftermath of Hurricane Isabel when she was actively involved in official hurricane cleanup work.⁴⁸ Similarly, a taxpayer received a waiver where a major blizzard paralyzed her home area and made it impractical and unsafe to travel to her bank on the last day of the 60-day rollover period.⁴⁹

Other Events Beyond the Taxpayer's Reasonable Control

The IRS often does not identify the specific rationale justifying a favorable waiver ruling. However, it appears to have justified waivers in some unusual and disparate situations simply because events were, in the words of the statute, "beyond the reasonable control" of the taxpayer.⁵⁰ For example, the IRS waived the 60-day rollover period in each of the following unusual situations:

- An accountant and custodian computed and made a distribution in excess of the minimum amount required to be paid to a taxpayer over age 70 1/2.⁵¹

- Taxpayers recovered (or replaced) funds distributed from an IRA on the fraudulent advice of a financial advisor or spouse who stole or dissipated the funds.⁵²
- Taxpayer was a civilian working in a foreign war zone when his employer deposited a plan distribution directly to his U.S. bank account.⁵³
- Taxpayer had difficulties with (1) service providers (a broker and a delivery service), and (2) the sale of securities necessary to complete the rollover.⁵⁴
- An advisor miscalculated the tax effect of rolling over only part of a distribution of employer stock.⁵⁵
- Taxpayer mistakenly made an on-line reinvestment of IRA funds into non-IRA property because of a confusing Web site.⁵⁶
- Problems transferring IRA funds from a foreign bank delayed a rollover.⁵⁷
- Distributions that the taxpayer believed avoided the penalty on early distributions were later ruled by the IRS to be in excess of the amount that would avoid the penalty.⁵⁸

Equity or Good Conscience Requires Waiver

In some other unusual situations, it appears the IRS has simply concluded that it would offend equity or good conscience not to waive the 60-day rollover requirement. For example, the IRS granted a waiver where a custodian deposited an expected IRA distribution into the non-IRA brokerage account of an elderly taxpayer who was away from home for an extended period and unaware of the deposit.⁵⁹

The IRS also granted a waiver where a disabled taxpayer attempted to return a retirement plan distribution four days after expiration of the 60-day rollover period.⁶⁰ In another ruling, a retired taxpayer with a disabled spouse and dependent son mistakenly thought a qualified plan distribution was severance pay not eligible for rollover.⁶¹ Similarly, the IRS granted a waiver to a taxpayer who, because of limited English language capability, misunderstood his financial advisor's instructions and withdrew more from his IRAs than was necessary.⁶²

The Unfavorable IRS Letter Rulings

As indicated above, only about 10 percent of the 60-day waiver rulings issued during the last six months

of 2004 were unfavorable to taxpayers. This is probably due in significant part to the wide latitude given the IRS to grant waivers. It may also be due in part to reluctance of taxpayers to request rulings in unfavorable fact situations, or the withdrawal of ruling requests in such situations. (However, as more fully discussed below, failure to request a waiver ruling may preclude judicial review of the issue.)

In any event, as the following analysis indicates, the unfavorable rulings generally involve unsuccessful attempts to convince the IRS to (1) rectify the taxpayer's own planning errors, or (2) mitigate the consequences of actions the IRS considers inconsistent with the rollover process.

Distribution Not Eligible for Rollover

Not surprisingly, the IRS has repeatedly ruled that it cannot waive the 60-day requirement for a distribution that is not otherwise eligible for rollover.⁶³ For example, the tax law does not extend any rollover rights to a beneficiary of an IRA who is not the surviving spouse of the IRA owner.⁶⁴ Nor may a taxpayer roll over an IRA distribution, timely or not, if the taxpayer has rolled over a previous IRA distribution within the one-year period prior to the current distribution.⁶⁵ For these ineligible distributions, the 60-day rule is irrelevant and its waiver would be meaningless.

Funds Used for Personal Expense or Investment

The IRS feels no obligation to provide waivers to taxpayers who have used distributions for personal expenses or non-IRA investments. For example, taxpayers failed to obtain waivers where they used their distributions for payment of personal expenses,⁶⁶ college tuition,⁶⁷ attorney's fees⁶⁸ or the purchase price of investment real estate.⁶⁹ It was irrelevant that the taxpayer actually intended all along to provide replacement funds for the rollover, but failed to do so within the 60-day rollover period because of events beyond his or her control.⁷⁰

Considerations of equity or good conscience seem to have no bearing on these waiver denials. In one of the rulings, an IRA custodian did not explain rollover options to an elderly taxpayer who used her distribution for payment of nursing care costs.⁷¹ In another, an attorney induced a financially unsophisticated divorcee to request a distribution to pay the attorney's legal fees.⁷² In still another ruling, the taxpayer used the distribution as a temporary loan to pay his daughter's

tuition expenses until approval of her student loans.⁷³ Thus, the short-term personal use of funds in these rulings appears to have outweighed automatically all other considerations of equity or reasonable cause.

As justification for its hard-line position, the IRS asserts that personal use of distributed funds "is not consistent with the intent of Congress to allow portability between eligible retirement plans."⁷⁴ It is very difficult to take this assertion seriously. As the IRS itself has acknowledged, the tax law permits personal use of funds so long as the taxpayer rolls over the appropriate amount within the allowed 60-day period.⁷⁵ Obviously too, investing the funds in a personal interest-bearing account at a financial institution does not prevent rollover of the funds, and does not even prevent the issuance of an IRS waiver of the 60-day period.⁷⁶

In fact, allowing personal use of funds is not only consistent with portability, it actually enhances portability by broadening the population of taxpayers who will complete rollovers. The waiver statutes themselves say nothing about the interaction between waivers and portability. The waiver statutes simply allow the IRS to lengthen the rollover period by delaying the rollover deadline.⁷⁷ These statutes provide no basis for changing the nature of the rollover period, *e.g.*, by permitting personal expenditures of rollover funds for the original 60-day period but prohibiting them thereafter.

In Rev. Proc. 2003-16,⁷⁸ the IRS lists the use of distributed funds as only one of a number of factors that enter into the determination of whether it will grant a waiver. It is, of course, reasonable to take into account the use of funds as some evidence of intent not to roll them over. However, there is no indication in the revenue procedure that personal use of funds should trump all other equitable considerations.

Thus, it seems evident that personal use of funds should not prevent the IRS from granting a waiver where there are substantial unrelated reasons for granting the waiver. For example, the IRS should grant the waiver to a taxpayer who was unable to timely complete a rollover because of hospitalization for a serious medical condition, whether or not the taxpayer made personal use of distributed funds. At the other extreme, it may be reasonable to deny waivers where personal use of funds, coupled with unrealistic expectations for replacing the funds, was the only reason a taxpayer failed to satisfy the 60-day rollover requirement.

LTR 200449039⁷⁹ is a good example of a favorable waiver ruling where the IRS ignored personal use of

distributed funds. The IRS granted the 60-day waiver because the taxpayer (1) misunderstood the 60-day rollover period, (2) was late sending forms and funds to his broker, (3) had difficulty with the broker completing forms, (4) used a courier service without weekend service, and (5) was two days late accumulating rollover funds because of difficulty buying and selling securities. Since the taxpayer had to engage in security transactions to accumulate rollover funds, it is obvious he had used the previously distributed funds for personal expense or investment for a period extending at least two days beyond the 60-day period.

Unconsummated Personal Use Intent

The mere unfulfilled intent to use distributed funds for personal or investment purposes should not be sufficient reason to deny a waiver. Fortunately, the IRS agrees, granting waivers to taxpayers who changed their minds before actually expending the funds for personal purposes.⁸⁰

Initial Absence of Rollover Intent

The IRS will deny a waiver where it is convinced the taxpayer did not initially intend to roll over a distribution, but changed his or her mind after the 60-day rollover period had expired. In one unfavorable ruling, a widow claimed she had erroneously believed that the tax on distributions from her deceased husband's retirement plans would be limited to the 20-percent withholding tax. The IRS, however, questioned her assertion since she had signed distribution papers explaining the respective tax consequences of a taxable distribution and a nontaxable rollover. The IRS noted it was only after the expiration of the 60-day period, when her tax preparer told her what the actual amount of tax on the distribution would be, that she changed her mind and decided she wanted to roll over the distribution.⁸¹

In another unfavorable ruling, an IRA distributed its funds to a trust set up by the decedent. Although the trust could not roll over the funds, the decedent's surviving spouse had the power to take the funds out of the trust and roll them over to her own IRA. Although she died before the expiration of the 60-day rollover period, the IRS believed there was no credible evidence that she had demanded the funds with the intent of rolling them over. It is not clear, however, whether the IRS issued the unfavorable ruling (1) because of lack of evidence of the surviving spouse's rollover intent, or (2) because, in the absence of her demand for the funds, they remained in a trust that could not roll them over.⁸²

The Occasional Peculiar Ruling

The IRS occasionally issues a waiver ruling that boggles the mind. In LTR 200421003, a widow received a distribution of the funds in her deceased husband's IRA and deposited the funds into her savings account. The bank custodian failed to inform her that she could roll over the funds tax-free and failed to alert her to the 60-day rollover period. The IRS denied a waiver on the grounds (1) a deposit in a savings account was inconsistent with a rollover, (2) she did not demonstrate hardship, and (3) denial of the waiver was not against equity or good conscience.

The IRS rationale for this ruling does not make much sense in light of many other favorable rulings with almost identical facts. Clearly, the failure of the bank custodian to inform the taxpayer of rollover possibilities was, in the words of the statute, an event "beyond the reasonable control" of the taxpayer.⁸³ As discussed above in this article, the IRS regularly grants a waiver of the 60-day period where a trustee, custodian or former employer fails to provide information about the possibility of a rollover,⁸⁴ particularly where the taxpayer is a surviving spouse dealing with a deceased spouse's IRA.⁸⁵

Judicial Review of Unfavorable Rulings

If a taxpayer mounts a judicial challenge to an IRS deficiency assessment (or an IRS refusal of a refund), it appears likely the courts will give at least a limited review to a previous IRS denial of a waiver of the 60-day rollover period. Although no published case has yet dealt with such a denial, the courts have reviewed denials of waivers in similar situations.

In *A.H. Mailman*,⁸⁶ the taxpayer argued the IRS should have waived a penalty for substantial underpayment of tax. The applicable statute stated the IRS "may" waive the penalty if the taxpayer shows there is "reasonable cause" for the understatement and the taxpayer acted in "good faith."⁸⁷ The Tax Court held it could review the denial of the waiver since (1) the statute and legislative history did not forbid review, and (2) the statute provided an ascertainable standard for waiving the penalty that was susceptible to judicial review.

However, out of deference to the discretion granted the IRS by the statute, the court limited its review to a determination of whether the IRS abused its discre-

tion, *i.e.*, acted “arbitrarily, capriciously, or without sound basis in fact.”⁸⁸ (Although the *Mailman* court did not ultimately find an IRS abuse of discretion, other courts have found abuses of discretion in cases involving the same or similar statutes.⁸⁹)

The rationale of the *Mailman* case should apply equally well to judicial review of denials of 60-day rollover waivers. As with the statute in *Mailman*, the 60-day waiver statutes provide discretionary authority, stating the IRS “may” waive the 60-day rollover requirement. In addition, the 60-day statutes and legislative history do not forbid judicial review, and the statutes provide an ascertainable standard susceptible to judicial review. That is, the statutory phrases “equity or good conscience” and “reasonable control” present concepts familiar to the courts.⁹⁰

However, if a taxpayer desires judicial review of the failure of the IRS to grant a waiver, the taxpayer must have actually requested the waiver. A court will not find the IRS abused its discretion where the taxpayer did not give it any opportunity to exercise discretion.⁹¹

In Summary

The IRS enjoys wide latitude in granting waivers of the 60-day rollover requirement. For the most part, it has used that latitude generously, preserving tax-free rollovers for the ill, the bereaved and the uninformed. It has protected taxpayers from third-party errors—and often even from their own errors.

The IRS has also properly denied waivers where rollovers would have been invalid even if the 60-day rule had been satisfied. In addition, it has appropriately denied waivers where taxpayers who decided not to roll over their distributions changed their minds after expiration of the 60-day period.

Unfortunately, though, the IRS has taken an inappropriate hard line by dogmatically denying waivers to taxpayers who use distributed funds for personal expenses or investments. In those situations, it has generally declined to weigh all the facts and circumstances. These unfavorable rulings appear to be candidates for judicial review under the “abuse of discretion” standard.

ENDNOTES

¹ Code Secs. 402(c)(3)(A), 408(d)(3)(A), 408(d)(3)(D). The tax-favored retirement plans that qualify for rollover treatment include qualified employer plans and annuities under Code Secs. 401(a) and 403(a), tax-sheltered annuities of tax-exempt organizations under Code Sec. 403(b) and certain eligible governmental plans under Code Sec. 457.

² Code Secs. 402(c)(3)(B), 408(d)(3)(I).

³ Rev. Proc. 2005-4, IRB 2005-1, 128, explains the procedures for obtaining an IRS ruling on the 60-day waiver issue. Rev. Proc. 2005-8, IRB 2005-1, 243, establishes the amount of the fee required to submit the request.

⁴ Rev. Proc. 2003-16, IRB 2003-4, 359.

⁵ Although IRS letter rulings are not regarded as precedent on which the public may rely, they are indicative of the thinking and practice of the IRS. Code Sec. 6110(k)(3); *Rowan Companies*, S Ct, 81-1 USTC ¶ 9479, 452 US 247, at 261, note 17, 101 S Ct 2288; *G.A. Rauenhorst*, 119 TC 157, Dec. 54, 899 (2002).

⁶ LTR 200502054 (Oct. 19, 2004); LTR 200453019 (Sept. 30, 2004); LTR 200451040 (Sept. 23, 2005); LTR 200449037 (Sept. 10, 2004); LTR 200445029 (Aug. 9, 2004).

⁷ LTR 200451033 (Sept. 22, 2004).

⁸ LTR 200502054 (Oct. 19, 2004); LTR 200453019 (Sept. 30, 2004); LTR 200445029 (Aug. 9, 2004); LTR 200440026 (July 6, 2004).

⁹ LTR 200504042 (Nov. 1, 2004).

¹⁰ LTR 200447039 (Aug. 27, 2004).

¹¹ LTR 200507022 (Nov. 23, 2004); LTR 200443040 (July 29, 2004).

¹² LTR 200443037 (July 27, 2004).

¹³ LTR 200444035 (Aug. 4, 2004).

¹⁴ LTR 200444035 (July 9, 2004).

¹⁵ LTR 200505028 (Nov. 9, 2004); LTR 200453020 (Oct. 7, 2004); LTR 200445042 (Aug. 10, 2004); LTR 200443046 (July 29, 2004).

¹⁶ LTR 200506030 (Nov. 19, 2004).

¹⁷ *Id.*

¹⁸ LTR 200506029 (Nov. 17, 2004); LTR 200453022 (Oct. 4, 2004); LTR 200453018 (Oct. 6, 2004).

¹⁹ LTR 200510036 (Dec. 14, 2004).

²⁰ LTR 200507019 (Nov. 29, 2004).

²¹ LTR 200439047 (June 29, 2004).

²² LTR 200503034 (Oct. 28, 2004).

²³ LTR 200445030 (Aug. 10, 2004).

²⁴ LTR 200439050 (June 30, 2004).

²⁵ LTR 200401024 (Nov. 4, 2003).

²⁶ LTR 200508025 (Nov. 29, 2004); LTR 200504036 (Nov. 4, 2004); LTR 200444027 (Aug. 5, 2004); LTR 200440027 (June 8, 2004).

²⁷ LTR 200508030 (Nov. 30, 2004).

²⁸ LTR 200445031 (Aug. 10, 2004).

²⁹ LTR 200510037 (Dec. 14, 2004).

³⁰ LTR 200503032 (Oct. 25, 2004); LTR 200447042 (Aug. 26, 2004).

³¹ LTR 200430031 (Apr. 29, 2004).

³² LTR 200442035 (July 23, 2004).

³³ LTR 200453026 (Oct. 4, 2004).

³⁴ LTR 200439049 (July 1, 2004).

³⁵ Code Secs. 402(c)(3)(B), 408(d)(3)(I). The

specific inclusion of “events beyond the reasonable control” of the taxpayer as an equitable consideration for waiving the 60-day rollover period considerably broadens the scope of these statutory provisions. Contrast Code Sec. 654(e), where a similar provision (providing for waiver of the estimated tax penalty) does not contain any kind of reasonable cause language. Under that section, the IRS cautions that “reliance on the advice of a competent tax advisor may constitute reasonable cause ... but it does not provide a basis for a waiver of the ... penalty” as a matter of equity and good conscience. IRS Penalty Handbook §3.

³⁶ LTR 200507018 (Nov. 22, 2004); LTR 200507017 (Nov. 24, 2004).

³⁷ LTR 200451039 (Sept. 24, 2004).

³⁸ LTR 200512028 (Dec. 27, 2004); LTR 200508029 (Nov. 30, 2004); LTR 200507017 (Nov. 24, 2004); LTR 200444028 (Aug. 5, 2004).

³⁹ LTR 200507023 (Nov. 23, 2004); LTR 200446029 (Aug. 17, 2004).

⁴⁰ LTR 200506033 (Nov. 15, 2004); LTR 200506028 (Nov. 18, 2004); LTR 200505029 (Nov. 9, 2004); LTR 200505026 (Nov. 8, 2004).

⁴¹ LTR 200505031 (Nov. 8, 2004); LTR 200503035 (Oct. 25, 2004); LTR 200453021 (Oct. 7, 2004); LTR 200451038 (Sept. 24, 2004).

⁴² LTR 200453027 (Oct. 4, 2004); LTR 200442034 (July 22, 2004).

⁴³ LTR 200444031 (Aug. 5, 2004).

- ⁴⁴ LTR 200506031 (Nov. 17, 2004); LTR 200441032 (July 15, 2004).
- ⁴⁵ LTR 200447051 (Aug. 26, 2004); LTR 200447041 (Aug. 27, 2004); LTR 200424008 (Mar. 17, 2004).
- ⁴⁶ LTR 200502050 (Oct. 19, 2004).
- ⁴⁷ Code Secs. 402(c)(3)(B), 408(d)(3)(I).
- ⁴⁸ LTR 200424008 (Mar. 17, 2004).
- ⁴⁹ LTR 200406054 (Nov. 13, 2003).
- ⁵⁰ Code Secs. 402(c)(3)(B), 408(d)(3)(I).
- ⁵¹ LTR 200445038 (Aug. 13, 2004); LTR 200443034 (July 29, 2004).
- ⁵² LTR 200512035 (Aug. 13, 2004); LTR 200508024 (Dec. 2, 2004).
- ⁵³ LTR 200502052 (Oct. 15, 2004).
- ⁵⁴ LTR 200449039 (Sept. 8, 2004).
- ⁵⁵ LTR 200446031 (Aug. 17, 2004).
- ⁵⁶ LTR 200443038 (July 26, 2004).
- ⁵⁷ LTR 200442036 (July 23, 2004).
- ⁵⁸ LTR 200442033 (July 9, 2004).
- ⁵⁹ LTR 200446027 (Aug. 2, 2004).
- ⁶⁰ LTR 200441035 (July 14, 2004).
- ⁶¹ LTR 200445039 (Aug. 9, 2004).
- ⁶² LTR 200445041 (Aug. 10, 2004).
- ⁶³ LTR 200443039 (July 29, 2004).
- ⁶⁴ LTR 200513032 (Jan. 4, 2005); LTR 200502049 (Oct. 18, 2004); LTR 200452041 (Sept. 30, 2004).
- ⁶⁵ LTR 200452047 (Sept. 28, 2004).
- ⁶⁶ LTR 200504041 (Nov. 2, 2004); LTR 200417033 (Jan. 30, 2004).
- ⁶⁷ LTR 200504037 (Nov. 4, 2004).
- ⁶⁸ LTR 200452042 (Sept. 30, 2004).
- ⁶⁹ LTR 200446030 (Aug. 19, 2004).
- ⁷⁰ LTR 200504037 (Nov. 4, 2004); LTR 200446030 (Aug. 19, 2004).
- ⁷¹ LTR 200504041 (Nov. 2, 2004).
- ⁷² LTR 200452042 (Sept. 30, 2004).
- ⁷³ LTR 200504037 (Nov. 4, 2004).
- ⁷⁴ LTR 200504041 (Nov. 2, 2004); LTR 200417033 (Jan. 30, 2004).
- ⁷⁵ Notice 2002-3, IRB 2002-2, 289; LTR 9010007 (Dec. 14, 1989).
- ⁷⁶ LTR 200512028 (Dec. 27, 2004); LTR 200507017 (Nov. 24, 2004); LTR 200507018 (Nov. 18, 2004); LTR 200506028 (Nov. 18, 2004).
- ⁷⁷ Code Secs. 402(c)(3)(B), 408(d)(3)(I).
- ⁷⁸ Rev. Proc. 2003-16, IRB 2003-4, 359.
- ⁷⁹ LTR 200449039 (Sept. 8, 2004).
- ⁸⁰ LTR 200406054 (Nov. 13, 2003); LTR 200406054 (Nov. 13, 2003).
- ⁸¹ LTR 200508027 (Nov. 30, 2004).
- ⁸² LTR 200453018 (Oct. 6, 2004).
- ⁸³ Code Sec. 408(d)(3)(I).
- ⁸⁴ LTR 200505031 (Nov. 8, 2004); LTR 200503035 (Oct. 25, 2004); LTR 200453021 (Oct. 7, 2004); LTR 200451038 (Sept. 24, 2004).
- ⁸⁵ LTR 200512028 (Dec. 27, 2004); LTR 200508029 (Nov. 30, 2004); LTR 200507017 (Nov. 24, 2004); LTR 200444028 (Aug. 5, 2004).
- ⁸⁶ *A.H. Mailman*, 91 TC 1079, Dec. 45,218 (1988).
- ⁸⁷ Code Sec. 6661(c) (repealed 1989).
- ⁸⁸ *Mailman*, *supra* note 86, 91 TC, at 1084.
- ⁸⁹ *G.S. Mauerman*, CA-10, 94-1 USTC ¶ 50,222, 22 F3d 1001; *M.H. Jung Est.*, 101 TC 412, Dec. 49,387 (1993).
- ⁹⁰ Code Secs. 402(c)(3)(B) and 408(d)(3)(I) provide in relevant part: "The Secretary may waive the 60-day requirement ... where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement."
- ⁹¹ *McCoy Enterprises*, CA-10, 95-2 USTC ¶ 50,332, 58 F3d 557; *E.A. Reinke*, CA-8, 95-1 USTC ¶ 50,064, 46 F3d 760.

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