PLR 201821008

IRS has privately ruled that a decedent's 457 governmental plan distribution that was paid to his estate because he failed to name a beneficiary was eligible for a tax-free rollover to the surviving spouse's IRA. The surviving spouse was the executor and sole beneficiary of the decedent’s estate, and, under these circumstances, IRS said the amount could be treated as paid directly to the surviving spouse.

The ruling illustrates the need for vigilance in properly designating beneficiaries for retirement plan accounts.

Background on 457 plans. Under Code Sec. 457(b), an eligible deferred compensation plan (a "457 plan") is one that is established and maintained by an eligible employer (e.g., a state and local government) and that meets specific statutory requirements. The eligible rollover distribution rules that apply to qualified plans apply to distributions from 457 plans. Thus, for example, a payment made from a 457 plan is not includible in gross income in the year paid to the extent that:

1. any portion of the balance of an employee's credit in the plan is paid to the employee in an eligible rollover distribution (within the meaning of Code Sec. 402(c)(4));
2. the employee timely transfers any portion of the property received in the distribution to an eligible retirement plan (as described in Code Sec. 402(c)(8)(B), including IRAs); and
3. specified rollover requirements are met, including the 60-day limit on the period in which the rollover must be made. (Code Sec. 457(e)(16)(A), Reg § 1.457-7(b)(2))
Under Code Sec. 402(c)(4), an eligible rollover distribution is any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust, but not if the distribution is:

- one of a series of substantially equal periodic payments, that are made not less frequently than annually and that are made for the life (or life expectancies or the joint life expectancies) of the employee and the employee’s designated beneficiary, or for a period of 10 years or more;
- any distribution to the extent the distribution is required under Code Sec. 401(a)(9) (i.e., a required minimum distribution (RMD)); and
- any distribution which is made upon hardship of the employee.

Under Code Sec. 457(e)(16)(B), the Code Sec. 402(c)(9) rules apply to payments from a 457 plan. And under Code Sec. 402(c)(9), if any distribution attributable to an employee is paid to his or her spouse after the employee's death, the Code Sec. 402(c) rules apply to the distribution in the same way as if the spouse were the employee.

Under Code Sec. 402(c)(9), a surviving spouse who may roll over a distribution into the spouse's own IRA may name beneficiaries for the IRA and defer commencing RMDs until the spouse's required beginning date (for IRAs, April 1 of the year following the year in which age 70.5 is attained).

**Facts.** Decedent, a participant in a 457 plan, died before reaching age 70.5. Decedent failed to designate a beneficiary under the plan, and, thus, his estate was the beneficiary of his account. Following Decedent’s death, the plan distributed his account to his estate in a lump sum. The distribution from the plan totaled Amount A, from which the plan withheld federal and state taxes before paying the remainder to Decedent’s estate.

Decedent’s surviving spouse is the executor and sole beneficiary of his estate. As executor, she promptly distributed the net amount the estate received from the plan to herself as sole beneficiary. She then deposited this amount, plus an amount equal to the taxes that were withheld by the plan, into IRA X, an individual retirement account established in her name. The amount deposited into IRA X equaled Amount A, which
was deposited within 60 days of the date Amount A was distributed from the plan. The surviving spouse asked IRS to rule that the rollover to her IRA was tax-free.

What necessitated the ruling request was the fact that Decedent’s 457 account was distributed to his estate, rather than distributed “to the spouse of the employee” as required by Code Sec. 402(c)(9).

**Favorable ruling.** IRS pointed out that Decedent’s estate was the beneficiary of his account in the plan, and his account was paid by the plan to the estate in a lump sum (net of taxes withheld on the distribution). The surviving spouse, who was the executor and sole beneficiary of Decedent’s estate, promptly distributed the amount received from the plan to herself, and then deposited the amount distributed from the plan (including both the net amount the estate received from the plan and an amount equal to the taxes withheld on such distribution) into IRA X within 60 days of the date the amount was distributed from the plan.

Under these circumstances, IRS ruled that Decedent’s account under the plan may be treated as paid from the plan to Decedent’s spouse for purposes of Code Sec. 402(c). Accordingly, IRS concluded that the surviving spouse:

1. May be treated as having received the distribution of Amount A from the plan for purposes of Code Sec. 402(c);
2. Was eligible to roll over Amount A to IRA X, which was established and maintained in her own name; and
3. Will not be required to include Amount A in her gross income for federal income tax purposes for the calendar year in which the distribution and rollover occurred.

IRS has reached a similar conclusion where an IRA was unintentionally made payable to the decedent’s estate rather than to his surviving spouse (see, e.g., PLR 201212021) and where a 401(k) plan account was funneled to a surviving spouse through a marital trust, where the surviving spouse was the sole trustor, trustee, and beneficiary of the trust (PLR 201523019).
Sixty-day IRA Rollover Rule Waived for Taxpayer Who Relied on Spouse’s Advice

PLR 201822033

In a private letter ruling (PLR), IRS has allowed a late qualified-plan-to-IRA rollover on somewhat unusual grounds. It waived the 60-day rollover deadline on the strength of the taxpayer’s claim that she relied to her detriment on her spouse and her misinformed belief that she had until the end of the tax year to complete the rollover.

Background. Under Code Sec. 402(c)(1), there's no current tax on an eligible rollover distribution from a qualified retirement plan that's rolled over into an eligible retirement plan within 60 days. An eligible rollover distribution is any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except for: certain substantially equal periodic payments; required minimum distributions under Code Sec. 401(a)(9); and hardship distributions. (Code Sec. 402(c)(4) An eligible retirement plan includes an individual retirement account (IRA). (Code Sec. 402(c)(8)(B))

IRS may waive the 60-day rule if an individual suffers a casualty, disaster, or other event beyond his or her reasonable control, and not waiving the 60-day rule would be against equity or good conscience (i.e., hardship waiver). (Code Sec. 402(c)(3)(B))

Rev Proc 2003-16, 2003-1 CB 359, establishes a letter-ruling procedure for taxpayers to apply for a waiver of the 60-day rollover requirement (i.e., by submitting a private letter ruling (PLR) request and paying a user fee) and sets out several factors that IRS considers in determining whether to waive the 60-day rollover requirement. These factors include (1) errors committed by a financial institution; (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.

Facts. On Jan. 14, 2017, Taxpayer retired and requested a lump sum distribution from her employer’s employee stock option plan, which was
treated as a qualified plan under Code Sec. 401(a). On Feb. 10, 2017, she deposited Amount 1 into a credit union account she jointly owned with her husband. She intended to roll over a portion of that amount, i.e., Amount 2, into an IRA that would be established at a financial institution, but didn't do so. Instead, Taxpayer and her spouse transferred Amount C to Account C on Feb. 27, 2017, while leaving the remaining portion of Amount 1 in their credit union account. In late August or early September of 2017, when Taxpayer’s spouse contacted their tax adviser about rolling over Amount 2 to an IRA, they learned they had missed the 60-day rollover period.

Taxpayer maintained she missed the 60-day rollover because she relied on her spouse and her misinformed belief that she had until the end of 2017 to complete the rollover. She produced documentation showing that Amount C was retained in Account C since the date of its deposit into that account on Feb. 27, 2017.

Favorable ruling. Without much elaboration, IRS ruled that the information and documentation submitted by Taxpayer supported her claim that the failure to make a timely 60-day rollover of Amount 2 (a portion of the total Amount 1 plan distribution) was due to her reliance on her spouse and her misinformed belief that she had until the end of 2017 to complete the rollover. IRS waived the 60-day rollover requirement with respect to Amount 2 and ruled that if all the other Code Sec. 402(c)(3) requirements were met, and the taxpayer paid the money to an IRA, that payment will be considered a rollover contribution.