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# Agricultural Law Digest

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## IRA Rollovers: Tax Court Decision Surprises Even IRS

-by Neil E. Harl\*

In an unusual move that ended up favoring IRS, and invalidating a longstanding IRS position favoring taxpayers, the Tax Court has altered the landscape when it comes to individual retirement act (IRA) rollovers.<sup>1</sup> Effective January 1, 2015, taxpayers will be able to roll over fund assets, tax-free, in an IRA to IRA rollover, *only once in any one-year period*.<sup>2</sup> Although IRS authority has been to the contrary, allowing IRA-to-IRA rollovers once in a one-year period for *each IRA account*, IRS now agrees that the roll over rule now limits such roll overs to one per year *for all IRA accounts*.<sup>3</sup>

### History of the controversy

The statute,<sup>4</sup> enacted in 1974,<sup>5</sup> limits the frequency with which a taxpayer may make a non-taxable rollover contribution to one-year. Specifically, the statute reads –

The rollover rule “. . . does not apply to any amount. . . received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount . . . from an individual retirement account or an individual retirement annuity which was not includible in his gross income . . . .”

The Internal Revenue Service viewed the provision all along as limiting rollovers to one-year *for each IRA* so that in the case of an individual with more than one IRA, the one-year waiting rule *applied separately to each IRA*.<sup>6</sup> The proposed regulations taking that position were issued on July 14, 1981, and Pub. 590 has reiterated that position in years since. The proposed regulations stated (and still do) that the rollover exception–

“. . . does not apply to any amount received by an individual from an individual retirement account, individual retirement annuity or retirement bond if at any time during the 1-year period ending on the day of receipt, the individual received any other amount from the individual retirement account, individual retirement annuity or retirement bond, which was not includible in his gross income . . . . This rule applies to each separate individual, retirement account, individual retirement annuity, or retirement bond maintained by an individual. Thus, if an individual maintains two individual retirement accounts, IRA-1 and IRA-2, and rolls over the assets of IRA-1 into IRA-3, he is not precluded . . . from making a tax-free rollover from IRA-2 to IRA-3 or any other IRA within one year after the rollover from IRA-1 to IRA-3.”

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The 2013 edition of *Individual Retirement Arrangements*, Pub. 590, mirrors that language in an 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 where the case of *Bobrow v. Commissioner*<sup>7</sup> parts company with the IRS position.

#### **Bobrow v. Commissioner**

The Tax Court, in *Bobrow v. Commissioner*<sup>8</sup> read the statute differently and stated “by its terms, the one-year limitation laid out in [the statute] is not specific to any single IRA maintained by an individual but instead applies to all IRAs maintained by a taxpayer. . . . In other words, a taxpayer who maintains multiple IRAs may not make a rollover contribution from each IRA within one year.”<sup>9</sup>

#### **The IRS response**

The Internal Revenue Service, in *Announcement 2014-15*<sup>10</sup> stated that the Service will follow the interpretation of the statute as viewed by *Bobrow v. Commissioner*<sup>11</sup> and “. . . intends to withdraw the proposed regulation and revise Publication 590 to the extent needed to follow that interpretation. The Announcement went on to state “these actions by the IRS will not affect the ability of an IRA owner to transfer funds from one IRA trustee directly to another, because such a transfer is not a rollover and, therefore, is not subject to the one-rollover-per-year limitation. . . .”<sup>12</sup>

The Announcement also stated “. . . IRS understands that adoption of the Tax Court’s interpretation of the statute will require IRA trustees to make changes in the processing of IRA rollovers and in IRA disclosure documents, which will take time to implement. Accordingly, the IRS will not apply the *Bobrow* interpretation . . . to any rollover that involves an IRA distribution occurring before January 1, 2015.”<sup>13</sup>

The Announcement concludes “regardless of the ultimate resolution of the *Bobrow* case, the Treasury Department and the IRS expect to issue a proposed regulation. . . that would provide that the IRA rollover limitation applies on an aggregate basis. However, in no event would the regulation be effective before January 1, 2015.”<sup>14</sup>

#### **A footnote**

On April 21, 2014, the Tax Court refused to review the case of *Bobrow v. Commissioner*.<sup>15</sup>

#### **ENDNOTES**

<sup>1</sup> *Bobrow v. Comm’r*, T.C. Memo. 2014-21.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> I.R.C. § 408(d)(3)(A)(i), (B).

<sup>5</sup> Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 2002(b), 88 Stat. 829, 958 (1974).

<sup>6</sup> See Prop. Treas. Reg. § 1.408-4(b)(4)(ii). See also Pub. 590, *Individual Retirement Arrangements* p. 16 (2013).

<sup>7</sup> T.C. Memo. 2014-21.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 2014-1 C.B. 973.

<sup>11</sup> T.C. Memo. 2014-21.

<sup>12</sup> See Rev. Rul. 78-406, 1978-2 C.B. 157.

<sup>13</sup> Ann. 2014-15, 2014-1 C.B. 973.

<sup>14</sup> *Id.*

<sup>15</sup> T.C. Memo. 2014-21. See Docket No. 7022-11.

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