

Lack of Information Results in . . .

60-Day Rollover Rule Waiver

In March 2005, a widow was issued a check for the balance of her late husband's tax-deferred pension plan. Neither the employer nor the plan trustees provided the widow with any written information with regard to rollover rules or the tax consequences of the distribution.

Being unsophisticated in tax matters, the widow relied on advice from her financial advisors, attorneys, and accountants. Unfortunately, she did not make her accountant aware of the distribution until March 2006 while having her return prepared. The accountant immediately notified her of the tax consequences and explained that she could have rolled the amount into an IRA within 60 days of the distribution, thus avoiding any tax payment on the distribution.

As her original intent was to defer the payment of taxes on the pension, she requested that the 60-day rollover period be waived through a private letter ruling. She stated that the money was placed in her checking account and had not been touched. Had the plan trustees properly notified her of the tax consequences of the distribution as required by §402(f), or informed her of the rollover rules, she would have rolled the money into an IRA to defer taxes.

Under Revenue Procedure 2003-16, the IRS may waive the §402(c)(3) 60-day rollover rules depending on the facts and circumstances of each scenario. The following are included in the criteria the IRS considers:

- Errors of financial institutions.
- Inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error.
- Use of the amount of distribution or lack thereof.
- The time elapsed since the distribution occurred.

The IRS granted a waiver of the 60-day rollover rule to the taxpayer. Therefore, she had 60 days from the issuance date of the private letter ruling to move the funds from her checking account to a rollover IRA.

