



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Rob Portman  
United States Senate  
Washington, DC 20510

Attention:

Dear Senator Portman:

I am responding to your inquiry dated May 31, 2016, on behalf of a constituent who asked why he could not roll over just the after-tax dollars in his traditional IRA into a Roth IRA. The constituent rolled over the money in the traditional IRA from a 401(k) plan. In 2014, the IRS issued Notice 2014-54, which describes how an individual can roll over the after-tax dollars contained in a 401(k) plan distribution to one retirement account and the pre-tax dollars to another. You asked why the same rules do not apply to a distribution from an IRA.

Under section 402(a) of the Internal Revenue Code (Code), if a 401(k) plan contains both after-tax and pre-tax dollars, the rules treat any distribution from that plan as consisting of a proportionate share of each. This means an individual cannot take a distribution of just the after-tax dollars from the plan. The rules on rollovers of after-tax and pre-tax dollars from a 401(k) plan to other retirement accounts, including to traditional IRAs and Roth IRAs, are in section 402(c)(2). The last sentence of section 402(c)(2) states that the dollars in a distribution that are rolled over are treated as consisting first of pre-tax dollars. There was confusion over the meaning of this sentence when an individual rolls over a distribution through a direct rollover, described in section 401(a)(31)(A) of the Code, to more than one retirement account. It was not clear whether the parts directly rolled over to the separate accounts were each treated as a separate distribution, so that each of these separate distributions contained a proportionate share of after-tax and pre-tax dollars, or treated as just one distribution.

We published Notice 2014-54, found on our website at [www.irs.gov](http://www.irs.gov), in response to numerous comments over the correct interpretation of section 402(c)(2). The rules in Notice 2014-54 treat funds that individuals roll over from a 401(k) plan to different retirement accounts at the same time as one distribution. Also, if an individual rolls over all the pre-tax dollars in one distribution, then, because of the rule in the last sentence of section 402(c)(2) (the "pre-tax-first rule"), that individual can roll over any after-tax

dollars separately. For example, an individual can directly roll over to a traditional IRA all the pre-tax dollars in a distribution and to a Roth IRA all the after-tax dollars. Different rules apply to distributions from designated Roth accounts in 401(k) plans.

The rules for distributions from traditional IRAs are in section 408(d) of the Code. Under section 408(d), no pre-tax-first rule exists for traditional IRA distributions rolled over to IRAs, so the rules in Notice 2014-54 could not be extended to distributions from traditional IRAs. If an individual's traditional IRAs, when combined, contain both after-tax and pre-tax dollars, the rules treat any distribution as consisting of a proportionate share of each. Individuals can roll over ("convert") any such distribution (except for any part that is a required minimum distribution because the IRA owner is 70½ or older) to a Roth IRA, but the pre-tax dollars in the conversion must be included in gross income.

I hope this information is helpful. If you have questions, please call me or  
at .

Sincerely,

Victoria A. Judson  
Associate Chief Counsel  
Tax Exempt and Government Entities