

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

date: December 14, 2015

to: Director, Tax Forms and Publications

from: Deputy Associate Chief Counsel CC:TEGE:EOEG

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subject: Rollovers described at § 530(d)(5)

You requested guidance regarding the limitation on the number of rollovers permitted under § 530(d)(5) in light of the decision reached in *Bobrow v. Commissioner*, T.C. Memo. 2014-21. The Tax Court in *Bobrow* considered the rollover rules of § 408(d)(3) pertaining to individual retirement accounts (“IRAs”). Section 530(d)(5) describes the rollover rules pertaining to Coverdell education savings accounts (“Coverdell ESAs”).

#### Background

Section 408(d) governs distributions from IRAs. Generally, § 408(d)(1) provides that any amount distributed from an IRA is includible in gross income by the payee or distributee. Section 408(d)(3)(A)(i) allows a payee or distributee to exclude from gross income any amount paid or distributed from an IRA that is subsequently paid into an IRA not later than the 60th day after the day on which the payee or distributee received the distribution. This distribution and subsequent payment into an IRA within 60 days is called a “rollover.” Sections 408(d)(3)(A)(i) and (d)(3)(D)(i). Section 408(d)(3)(B), which describes a limitation on rollovers, states, “[t]his paragraph does not apply to any amount described in subparagraph (A)(i) 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 described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.”<sup>1</sup>

In *Bobrow*, the taxpayers, a married couple, maintained more than one IRA. During 2008, the taxpayers made a number of withdrawals from, and deposits to, their IRAs. On April 14, the husband withdrew \$ 65,064 from his traditional IRA. He withdrew the same amount from his rollover IRA on June 6. On June 10, he deposited \$ 65,064 in

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<sup>1</sup> A transfer of funds from an IRA by one trustee directly to another, referred to as a trustee-to-trustee transfer, is not a distribution or a rollover. Because the funds are never paid or distributed to the IRA owner and are not within the direct control or use of the IRA owner, the transfer is not a distribution and is tax-free. See Rev. Rul. 78-406, 1978-2 C.B. 157.

his traditional IRA and he deposited the same amount in his rollover IRA on August 4. The taxpayers asserted that they were eligible to exclude both distributions from gross income under the 60-day rollover rule of § 408(d)(3)(A) because the "one rollover per year" rule of § 408(d)(3)(B) applies separately to each IRA. The Tax Court held that the plain language of § 408(d)(3)(B) limits the frequency with which a taxpayer may elect to make a nontaxable rollover contribution. It concluded that the one-year limitation in § 408(d)(3)(B) is not specific to any single IRA maintained by an individual but instead applies to all IRAs maintained by a taxpayer. As a result, the court concluded that the husband's June 6 withdrawal from his rollover IRA was includible in gross income because, during the one-year period ending on that date, he had already made a tax-free rollover of funds from his traditional IRA.

Prior to 2014, the IRS applied the one-rollover-per year limitation on an IRA-by-IRA basis. Specifically, Proposed Regulation § 1.408-4(b)(4)(ii) stated that the one-rollover-per year limitation was applied on an IRA-by-IRA basis. See *also* the 2013 IRS Publication 590, *Individual Retirement Arrangements (IRAs)*. However, subsequent to *Bobrow*, the IRS withdrew Proposed Regulation § 1.408-4(b)(4)(ii) and issued Announcement 2014-15, 2014-16 I.R.B. 973 and Announcement 2014-32, 2014-48 I.R.B. 907, which, reflecting the legal interpretation set forth in *Bobrow*, provide that an individual can make only one rollover from an IRA to another (or the same) IRA in any 1-year period regardless of the number of IRAs owned.

## Discussion

Section 530(d) governs distributions from Coverdell ESAs. Generally, § 530(d)(1) provides that any amount distributed from a Coverdell ESA is includible in gross income by the distributee in the manner provided in § 72.<sup>2</sup> Section 530(d)(5), which describes rollover contributions and the limitation on such rollovers, states

Paragraph (1) shall not apply to any amount paid or distributed from a Coverdell education savings account to the extent that the amount received is paid, not later than the 60<sup>th</sup> day after the date of such payment or distribution, into another Coverdell education savings account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary who has not attained age 30 as of such date. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

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<sup>2</sup> Generally, § 530(d)(2) provides that no amount shall be includible in gross income under paragraph (1) if the qualified education expenses of the designated beneficiary during the taxable year are not less than the aggregate distributions during the taxable year.

There is no published guidance interpreting the § 530(d)(5) limitation on rollovers. However, Publication 970, *Tax Benefits for Education* states that only one rollover per Coverdell ESA is allowed during a 12-month period.

In light of the similarity of the language of §§ 408(d)(3)(B) and 530(d)(5), we believe that, with respect to rollovers described in § 530(d)(5), only one rollover per individual per year is permitted. In the event you wish to update Publication 970, we suggest using the following language in both the *What's New* section and in the "Caution" box under Rollovers and Other Transfers section of Chapter 7:

"You can make only one rollover from a Coverdell ESA to another Coverdell ESA in any 12-month period regardless of the number of Coverdell ESAs you own. However, you can make unlimited transfers from one Coverdell ESA trustee directly to another Coverdell ESA trustee because such transfers are not considered to be distributions or rollovers. The once in any 12-period limitation rule does not apply to the rollover of a military death gratuity or payment from Servicemembers' Group Life Insurance (SGLI)."

Please call me or Taina Edlund (202-317-4541) if you have any additional questions regarding this matter.