Take-Away: When in doubt, avoid engaging in a 60-day rollover of an IRA from one custodian to another custodian, and stick with a custodian-to-custodian transfer of the IRA balance. Missing the 60-day deadline will mean taxes and penalties, or an expensive trip to the IRS in the form of a requested private letter ruling to 'fix' the missed deadline.

Background: Past missives have covered the dangers of a 60-day rollover of an IRA to a new IRA custodian. The failure to complete that transfer within the 60 days results in an unexpected distribution of the IRA's assets, leading to immediate income taxes and an excise tax if the IRA owner was under the age 59 ½. Despite the ability to completely avoid the risk of taxation and penalty with a custodian-to-custodian transfer, individual IRA owners continue to use the 60-day rollover option to move their retirement funds, enough so that the IRS is regularly asked to waive the 60-day deadline in a variety of situations, some quite logical, while other test the imagination.

60-Day Rollover Rule: In general, a rollover must be completed no later than the 60th day following the day on which the distribute received the property distributed. [IRC 402(c)(3)(A); IRC 408(d)(3)(A).] This deadline is expressly 60 days, not two months.

Reasons for an IRS Waiver: The IRS has published Revenue Procedures that describe when it will grant a waiver of the 60-day rollover requirement. [Revenue Procedure 2003-16 via a private letter ruling, or Revenue Procedure 2016-47, describing the self-certification process to claim the waiver.] The IRS notes that it will consider all relevant facts and circumstances in determining the reasonableness of the individual's failure to meet the 60-day rollover deadline, and specifically mentions the following mitigating factors:

(1) Errors committed by a financial institution, i.e., the IRA custodian (distributing or receiving) screwed up;
(2) Inability to complete the 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 IRA distribution occurred and the funds were ultimately deposited 'back' in an IRA.

The self-certification process for a waiver of the 60-day rule expands upon the listed private letter ruling excuses. The self-certification process reasons for a waiver include:

(1) Financial institution error;
(2) Distribution by check which was either misplaced or never cashed;
(3) The distribution was deposited in an account that the individual mistakenly thought was an eligible retirement account;
(4) The individual's principal residence was 'severely' damaged;
(5) A member of the individual's family died;
(6) The individual, or a member of the individual's family was seriously ill;
(7) The individual was incarcerated;
(8) Restrictions were imposed on the distribution by a foreign country;
(9) Postal error;
(10) The distribution was made on account of an IRS levy and the proceeds of the levy were subsequently returned to the individual; and
(11) The party making the distribution delayed providing information that the receiving plan or IRA custodian required to complete the rollover, despite the individual's reasonable efforts to obtain the information.

Financial Institution Errors: In recent years, the IRS has been liberal in granting 60-day waivers to IRA owners who somehow failed to return the distributed funds to an IRA within the 60-day window. This is especially the case when the 'screw-up' was sourced to an IRA custodian. In Natalie Choates' book _Life and Death Planning for Retirement Benefits_ (section 2.7.07) she reports:

> *"Waiver granted for error by financial institution. This is by far the most common reason for obtaining a deadline waiver. The IRS always grants the waiver when the participant missed the deadline due to a processing error by a financial institution. Generally, the IRS seems to require the financial institution to admit the mistake in writing. Typical are rulings in which the financial institution inadvertently established a regular taxable account instead of an IRA with funds transferred from a prior advisor or institution; see PLRs 2004-02028, 2004-04053, 2004-01023, 2004-2004-2010; 2010-14073."*

Private Letter Ruling 202423009: Thus, it is something of a surprise to read a recent IRS Private Letter Ruling that denied an IRA owner any 60-day relief when there was a mistaken Roth conversion when the receiving IRA custodian deposited the qualified plan account balance in a Roth IRA.

Facts: A woman requested a *direct* payment/rollover of funds held in her employer's qualified plan account to a traditional IRA. The woman claimed that she was under the impression that a traditional IRA was to be established by the financial institution, i.e., her 'new' IRA custodian, to receive the rollover deposit from the qualified plan. However, the woman later discovered when she received the IRS Form 5498 that the rollover funds had been deposited by the custodian in a Roth IRA, not a traditional IRA, which meant that the direct distribution was treated as a taxable distribution to her. The woman promptly requested in a Private Letter Ruling a waiver by the IRS of the 60-day rollover requirement to enable her to move the funds from the Roth IRA to a traditional IRA and thus avoid having received a taxable distribution.

Request Denied: The IRS denied the woman's request for a waiver of the failure to move the distributed funds to a traditional IRA within the 60-day rollover period.

IRS Reasoning: The IRS noted that the Tax Code allows it to waive the 60-day rollover deadline where the failure to do so would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the account owner who is subject to the 60-day requirement. According to the IRS, the information and documentation provided by the woman did not show that she failed to accomplish a rollover of the plan funds to a traditional IRA due to any of the factors noted above in Revenue Procedure 2003-16, or "*that financial institution error caused Taxpayer A to miss the 60-day rollover.*"

> **Facts Not Disclosed:** It is unclear from this PLR what all the facts were in this situation, e.g., the amount of the rollover was undisclosed, and if a large amount was involved, that would mean that a large tax bill would arise when the Roth IRA was funded from a pretax qualified plan account.
>
> **Taxpayer Has Burden of Proof:** The IRS held that none of the factors were present that would excuse a late rollover, including mistakes by the financial institution. The woman, on whom the burden existed to establish that one of the mitigating factors existed, failed to meet that burden of proof.
>
> **Speculated Reasoning:** Since there is not much of an explanation in the PRL why the woman's waiver was denied, one possible reason was that if the IRS allowed the 'recharacterization' of a Roth IRA conversion-back-to-a-traditional IRA, that would indirectly allow a Roth IRA conversion to be reversed, or 'recharacterized' through 60-day rollover relief, when the 2017 Tax Act expressly eliminated all Roth IRA recharacterizations.

Observation: In PLR 202147015, the IRS reached the opposite conclusion when funds were rolled over from a qualified plan to the 'wrong' type of IRA, where it was Roth 401(k) funds that were mistakenly rolled over to a traditional IRA, and not to a Roth IRA. In this 2021 PLR, the IRS granted the waiver of the 60-day deadline for a 'late' rollover of funds to the Roth IRA, based upon the 'depositing error' of the financial custodian.

Conclusion: A 60-day rollover of a retirement account can be quite risky. While IRS waivers of the 60-day requirement can be obtained, or self-certified, there lurks the danger that the waiver will subsequently be denied by the IRS, leading to taxes and penalties. With any waiver requested, or asserted, the IRA owner always bears the burden of proof that he/she acted reasonably and that events beyond the owner's control caused the delay. In sum, skip all these risks and stick with a custodian-to-custodian direct transfer of the retirement account balance.