

When is there a “distribution” from a retirement plan?

For purposes of the income tax Code, when are funds considered “distributed” from a retirement plan or IRA? When the plan administrator cuts the check, mails the check, or deducts the amount from the participant’s account on its books? When the participant or beneficiary requests the distribution, receives the check, or negotiates the check? What if the check is payable to one party but is sent to a different party? Recent PLRs address this question, not always consistently.

If the check is received, a distribution has occurred (even if you can’t cash the check!)

If the check is received by the participant, there definitely has been a distribution. See, e.g., PLR **2004-42035**, ruling there was a distribution because the employee had received the check from the plan, even though she hadn’t cashed it. That’s not surprising.

What is perhaps surprising is that there is a distribution *even if the recipient of the check cannot possibly cash it!* In PLR **2004-24009**, taxpayer requested that his balance in Plan X be transferred by means of a direct rollover into Plan Y. A check *payable to Plan Y* was mailed to the employee, who did nothing with it for more than 60 days. “Because the check was not made out to you, it was impossible for you to use the funds for any purpose other than to roll them over into Plan Y. Your delay in attempting to deposit the funds in Plan X was due to your lack of understanding of the rollover rules.” The IRS granted a waiver of the 60-day rollover deadline; but, significantly, the IRS did consider that there had been a “distribution” of the plan balance, since the employee received the check—even though he could not cash that check because it was not payable to him.

PLR **2004-39049** is similar: Two employees requested distributions from a 401(k) plan, and received checks payable to their selected rollover IRA custodian. They never cashed the checks but held them in a safe deposit box, believing (due to erroneous advice) that they were not subject to the 60-day deadline. The IRS ruled that there was a distribution, but allowed a late rollover.

If the check is never received, a distribution may or may not have occurred

What if the participant never receives the check the plan sends him? It appears the IRS is confused on this point, based on recent inconsistent PLRs.

In PLR **2004-30031**, a divorcing wife was entitled, under a QDRO, to a share of her ex-husband’s QRP, which was invested at Firm D. She gave all necessary instructions to have her share rolled over to an IRA at Firm E. Firm D claimed it sent a check for the rollover to Firm E but this check was never received by Firm E and never cleared Firm D’s bank, so Firm D issued a replacement check. The rollover was ruled timely, because the distribution date was *the date of the replacement check*. Since taxpayer “did not receive the Plan B distribution check until after it was reissued,” the 60 days are measured from the time the check was reissued. The first “distribution” was not a distribution since it was never received.

PLR **2004-36017** is similar. Wife died leaving her QRP (Plan X) to Husband. Desiring to roll over these benefits, he “completed and signed a beneficiary option form,” requesting that his

interest be paid as a direct rollover to an IRA he had established. He requested that a check payable to the custodian of the proposed rollover IRA be mailed to him at his home address. Plan X said it complied with these instructions, but the check was never received by either Husband or the new IRA custodian, and was never “presented for payment.” Husband then died. The IRS accepted Husband’s estate’s assertion that there *had been no distribution* of the Plan X benefits.

But PLR **2004-47042** holds exactly the opposite of the above two PLRs. The IRA provider (a bank) liquidated an IRA on March 31, Year 1, and sent participant a check which was never received. The following year, the participant received a 1099-R showing the distribution. He requested and received a replacement check on June 8, Year 2, which he rolled over on June 17. The IRS treated this as a distribution *in Year 1* followed by a late rollover (and granted a waiver of the 60-day deadline). However, under the logic of PLRs 2004-30031 and 2004-36017, there was no distribution until the replacement check was received so there was no need for a waiver of the deadline because the June 17, Year 2, rollover was timely. Go figure!

Note that the Code (§ 408(d)(3)(A)) says the 60 days starts from the day “the individual receives the payment or distribution.” Reg. § 1.408-4(b)(1) similarly says the rollover deadline is the “60th day after the day on which [the participant] receives the payment or distribution.” So, based on the Code and its own regulation, the IRS was right in PLRs 2004-30031 and 2004-36017 and wrong in 2004-47042.