

Seventh Circuit Holds 10% Tax Applies to IRA Withdrawal Following Rollover

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At age 56, a partner left his law firm and elected to roll his balance in the firm 401(k) over into an IRA. Subsequently, he took a pre-age 59½ distribution from the 401(k) and was assessed with the additional 10% tax. The U.S. Tax Court upheld the additional 10% tax. The U.S. Court of Appeals for the Seventh Circuit upheld the Tax Court. The court held that the taxpayer would not have been subject to the 10% tax if he had taken the distribution directly from the 401(k) plan upon termination because of the exception in section 72(t)(2)(A)(v) of the Internal Revenue Code for post-separation distributions to an employee who has attained age 55, but because he chose to roll over his balance, the exception no longer applied to a distribution from an IRA. *Kim v. Comm'r of Internal Revenue*, No. 113390 -10 (7th Cir. May 9, 2012).