

201219037



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

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 08 2012

U.I.L. 9100.00-00, 408A.00-00

T.E.P.R.A.T.Y

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXX
Company P = XXXXXXXXXXXXXXXXXXXXX
Company F = XXXXXXXXXXXXXXXXXXXXX
Year 1 = XXXXXXXXXXXXXXXXXXXXX
Amount B = XXXXXXXXXXXXXXXXXXXXX
Amount C = XXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXXXXXXX

Plan Z = XXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This is in response to your letter dated xxxxxxxx, as supplemented by correspondence dated xxxxxxxxxx and xxxxxxxxxx, submitted on your behalf, by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (Regulations).

The following facts and representations have been submitted in support of your request.

Taxpayer A represents that he was in the business of sales-marketing and ran his business as a sole proprietorship. Taxpayer A had established Plan Z in which Taxpayer A was the sole participant. Company P was the plan administrator of Plan Z. Plan Z was terminated in Year 1. Taxpayer further represents that Plan Z contained both traditional and Roth funds in the amount of Amount B and Amount C, respectively.

Upon termination of Plan Z, in Year 1, Company P rolled over Taxpayer A's entire interest in Plan Z into IRA X, a traditional IRA set up by Taxpayer A with Company F. However, Amount C represented a distribution of Roth funds which should have been rolled over into Roth IRA Y. Taxpayer A asserts that Company P erred in rolling over Amount C to IRA X and also failed to correctly identify Amount C as a Roth amount on the Form 1099-R issued to Taxpayer A.

Taxpayer A did not discover this error on the part of Company P until after the deadline for making a timely recharacterization, as prescribed in section 408A(d)(6) of the Internal Revenue Code (Code). Taxpayer A then was advised by his accountant to request a ruling for an extension of time to recharacterize the contribution of Amount C to IRA X as a contribution to Roth IRA Y.

The Internal Revenue Service (Service) has not independently discovered Taxpayer A's failure to make a timely recharacterization.

Based on the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayer A be granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contribution of Amount C to IRA X as a contribution to Roth IRA Y.

With respect to your ruling request, section 408A(d)(6) of the Code and section 1.408A-5 of the Federal Income Tax Regulations (I.T. Regulations) provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having originally been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. This recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal income tax returns for the year of contributions.

Section 1.408A-5, Q&A-6 of the I.T. Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and

(3) the trustee must make the transfer.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made, are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

In the present case, Taxpayer A was not aware of the fact that the Roth amount had been erroneously rolled over into a traditional IRA until after the deadline for making a timely recharacterization had passed. Therefore, he was unaware of the necessity of making the election. Upon realizing the need to make the election, Taxpayer A, in a timely manner, submitted this request for relief under section 301.9100-3. Also, no tax years that would have been affected by the election to recharacterize the contribution of Amount C, had it been timely made, are closed by the statute of limitations.

Under the set of circumstances described above, Taxpayer A satisfies the requirements of section 301.9100-3(b)(1) of the regulations. Accordingly, we rule that, pursuant to clauses (i) and (iii) of section 301.9100-3 of the Regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contribution of Amount C to IRA X as a contribution to Roth IRA Y.

This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A at all relevant times.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with your authorization on file in this office.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxx, at xxxxxxxxxxxxxxxx.

Sincerely yours,



For:

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose

CC: xxxxxxxxxxxxxxxxxxxxxxxx