



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 408.03-00, 408A.00-00, 9100.00-00

FEB 13 2012

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

T. EP:RA:T3

Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXX
- IRA V = XXXXXXXXXXXXXXXXXXXXXXXX
- IRA W = XXXXXXXXXXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXXXXXXXXXX
- Bank B = XXXXXXXXXXXXXXXXXXXXXXXX
- Amount C = XXXXXXXXXXXXXXXXXXXXXXXX
- Amount D = XXXXXXXXXXXXXXXXXXXXXXXX
- Amount E = XXXXXXXXXXXXXXXXXXXXXXXX
- Amount F = XXXXXXXXXXXXXXXXXXXXXXXX
- Company C = XXXXXXXXXXXXXXXXXXXXXXXX
- Company E = XXXXXXXXXXXXXXXXXXXXXXXX
- Individual F = XXXXXXXXXXXXXXXXXXXXXXXX
- Individual G = XXXXXXXXXXXXXXXXXXXXXXXX
- IRA Y = XXXXXXXXXXXXXXXXXXXXXXXX

Roth IRA Z = xxxxxxxxxxxxxxxxxxxxxxxxxxx

Date 1 = xxxxxxxxxxxxxxxxxxxxxxxxxxx

Date 2 = xxxxxxxxxxxxxxxxxxxxxxxxxxx

Date 3 = xxxxxxxxxxxxxxxxxxxxxxxxxxx

Date 4 = xxxxxxxxxxxxxxxxxxxxxxxxxxx

Dear xxxxxxxxx:

This is in response to your letter dated xxxxxxxxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxxxxxx, submitted on your behalf by your authorized representative, requesting a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code") and relief under sections 301.9100-1 and 301-9100-3 of the Procedure and Administration Regulations (the "Regulations").

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

You represent that you maintained three IRA Certificates of Deposit (CDs) with Bank B, IRA V, IRA W, and IRA X. You also maintained IRA Y and Roth IRA Z with Company E, a provider of financial services and broker-dealer for Company C. Individual F, a certified financial planner with Company C is your financial advisor.

On Date 1, IRA V matured and you intended to roll over the proceeds into IRA Y. You delivered a check from Bank B in the amount of Amount C and made out to Taxpayer A IRA to Company C with instructions to deposit the amount in IRA Y. However, Individual G, an employee of Company C, erroneously deposited the check in Roth IRA Z, and Individual F, who supervised Individual G, failed to catch the error.

On Date 2, you mailed a check to Company C, made out to Company E in the amount of Amount D. The memo section of the check contained the note "Taxpayer A 2006 IRA. Prior to mailing the check you notified Individual F that you were sending a contribution to IRA Y. However, when the check was received, Individual G deposited the funds in Roth IRA Z. As in the prior transaction, Individual F did not catch the error.

Shortly after Date 2, on Date 3 and Date 4 you received distributions from IRA W and IRA X in the amounts of Amount E and Amount F respectively. In order to accomplish a trustee to trustee transfer, Bank B made the checks out to "Taxpayer A Traditional IRA." However, Individual G again placed the funds in Roth IRA Z and Individual F did not

catch the error. In filing your federal Income Tax Returns in 2006 and 2007 you reported tax-free rollovers of Amounts C, E and F and the contribution of Amount D as a deductible contribution to IRA Y. You assert that the errors made by Individual G were not determined until May 21, 2010, when you contacted Individual F for a review of your assets with Company E.

In a letter dated March 8, 2011, Individual F admitted that her former employee, Individual G had put the incorrect account number on the checks and that she failed to double check the account number as it being the correct one.

You assert that your failure to accomplish rollovers of Amounts C, E and F within the 60-day period was due to an error committed by Company E.

Based upon the foregoing facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distributions of Amount C, Amount E, and Amount F from IRA V, IRA W and IRA X, and that Amount D be re-characterized as a contribution to IRA Y.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by you is consistent with your assertion that your failure to accomplish rollovers of Amounts C, E and F to IRA Y was caused by errors committed by Individual F and Individual G of Company C. Specifically, Individual G erroneously deposited the funds into Roth IRA Z rather than traditional IRA Y as instructed.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount C from IRA V, Amount E from IRA W, and Amount F from IRA X. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount C, Amount E and Amount F into IRA Y. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the Service will treat the contribution of these amounts to IRA Y as rollover contributions within the meaning of Code section 408(d)(3).

With respect to your request for relief under section 301.9100-3 of the Regulations with respect to Amount D, section 408A(6) of the Code and section 1.408A-5 of the federal Income Tax Regulations (the "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. Under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, 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 contribution.

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.

Section 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)(i) of the Regulations provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower

tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made.

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.

The information presented and documentation submitted by you is consistent with your assertion that your failure to elect to recharacterize Amount D as a contribution to a traditional IRA on or before the date prescribed by law, including extensions, for filing your Federal Income Tax Return for the year of contribution, was a result of your lack of awareness that the contribution had been made to the Roth IRA and therefore that there was a necessity to make an election to recharacterize it. Upon discovering that the contribution had been deposited in the wrong account, you submitted this request for relief under section 301.9100 to the Service.

Based on the above, you meet the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i) and (iii) for the 2006 tax year. In addition, we find that the interests of the government are not prejudiced in this case, because granting relief does not result in you having a lower tax liability in the aggregate for all taxable years affected by the election that than you would have had if the election had been timely made.

Accordingly, you are granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contribution of Amount D as a contribution to IRA Y.

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

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with Form 2848 on file in this office.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxxxxxxxx,
SE:T:EP:RA:T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

CC: xxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxx