



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201427085

APR 10 2014

Uniform Issue List: 408A.00-00

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T. EP. RA. T1

Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXX
- IRA B = XXXXXXXXXXXXXXXXXXXX
- IRA C = XXXXXXXXXXXXXXXXXXXX
- IRA D = XXXXXXXXXXXXXXXXXXXX
- Financial Institution E = XXXXXXXXXXXXXXXXXXXX
- Financial Institution F = XXXXXXXXXXXXXXXXXXXX
- Financial Advisor G = XXXXXXXXXXXXXXXXXXXX
- Amount 1 = XXXXXXXXXXXXXXXXXXXX
- Amount 2 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This is in response to a letter dated December 5, 2012, as supplemented by correspondence received on February 6, 2013 and January 8, 2014, in which your authorized representative requests, on your behalf, relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). The following facts and representations were submitted in connection with your request.

Taxpayer A maintained IRA B with Financial Institution E. In January 2010, Taxpayer A transferred and converted a portion of IRA B equal to Amount 1 into Roth IRA C maintained by Financial Institution E. Also, in January 2010, Taxpayer A transferred and converted a portion of IRA B equal to Amount 2 into Roth IRA D maintained by Financial Institution F.

Taxpayer A represents that Financial Advisor G had advised him on financial issues including Taxpayer A's retirement accounts for a number of years. In 2009, Taxpayer A and Financial Advisor G discussed the opportunity to roll over Taxpayer A's IRA B to a Roth IRA in 2010.

As part of the discussion, Financial Advisor G informed Taxpayer A of the look back rule in sections 408A(d)(6) and 408A(d)(7) of the Internal Revenue Code (the "Code") which would allow Taxpayer A an opportunity to recharacterize the Roth IRA conversion as a roll-over from one traditional IRA account to another traditional IRA account. Taxpayer A understood that making the recharacterization would be to his advantage if the value of his investments in the converted Roth IRAs were to decline. At no time in the discussion was Taxpayer A made aware of the rules under Sections 408A (d)(6) and 408A(d)(7) which impose a strict deadline for making such a recharacterization. Taxpayer A's deadline for making such a recharacterization was October 17, 2011, which was the last date including extensions for filing an income return for 2010, the year of the conversion. Taxpayer A assumed that the deadline for making the recharacterization was the due date for filing his 2011 income tax returns on the belief that 2011 was the first year that he would be required to recognize income from the conversions absent a recharacterization.

Taxpayer A was granted an automatic six month extension for filing his 2011 income tax return. Under his erroneous belief that he was then still eligible to effect a recharacterization, on or about October 17, 2012, Taxpayer A sought to have his Roth IRA conversions recharacterized only to be advised of the expired deadline for a recharacterization. Taxpayer A has not received any notice or other communication from the Internal Revenue Service regarding his failure to effect a timely recharacterization.

Based on your submission and the above facts and representations, you request a ruling that pursuant to section 301.9100-3 of the regulations, Taxpayer A be granted an extension of time to recharacterize Roth IRAs C and D as traditional IRAs.

With respect to the Taxpayer A's request for relief under section 301.9100-3 of the regulations, 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 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 the IRA contributions.

Section 1.408A-5, Question & Answer ("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 either has been contributed to a Roth IRA or 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 this case, Taxpayer A failed to recharacterize his Roth IRAs back to traditional IRAs by the date permitted by law. That date was October 17, 2011, the last date (including extensions) for filing his income tax return for 2010. Financial Advisor G had informed Taxpayer A of the recharacterization rules but did not discuss the strict deadline for making such a recharacterization. Therefore, it is necessary to determine whether Taxpayer A is eligible for relief under the provisions of section 301.9100-3 of the regulations. At or around October 17, 2011, the value of the investments in the Roth IRA C and Roth IRA D began to decline so that indeed a recharacterization would have been advantageous to Taxpayer A. However, the absence of such a recharacterization is evidence that Taxpayer A, despite his efforts to comply with applicable rules, was unaware of the deadline for making a recharacterization election. Taxpayer A did not discover his mistake until October 17, 2012, after the due date for recharacterizing the 2010 Roth IRA conversions had passed.

Thus, Taxpayer A satisfies clause (v) of section 301.9100-3(b)(1) because he reasonably relied on the advice of Financial Advisor G concerning the Roth IRA conversion rules. In addition, because the statute of limitations on the Taxpayer A's 2010 return remains open, the interests of the government would not be prejudiced by providing relief.

Accordingly, we rule that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter to recharacterize Roth IRA C as a traditional IRA, and is granted a period not to exceed 60 days from the date of this letter to recharacterize Roth IRA D as a traditional IRA.

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

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

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX (ID XXXXXXXX) at (XXX) XX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

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Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose