



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201442071

JUL 23 2014

SE: T: EP: RA: T3

UIL No.: 408A.00-00, 9100.00-00

Legend

- Taxpayer A: *****
- Amount B: *****
- Amount C: *****
- Amount D: *****
- IRA X: *****

- Roth IRA Y: *****

- Accountant E: *****
- Financial Institution F: *****

Dear *****:

This letter is in response to a request for a letter ruling dated March 15, 2011, as supplemented by additional correspondence dated August 22, 2011, November 4, 2011, November 8, 2011, August 27, 2012, August 31, 2012, September 11, 2012, October 5, 2012, and October 23, 2012, submitted on your behalf by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("the P&A Regulations").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained IRA X, a traditional individual retirement account under section 408(a) of the Internal Revenue Code ("the Code"), at Financial Institution F. In December 2009, Accountant E counseled Taxpayer A to convert an amount from IRA X to a Roth IRA. At that time, neither Taxpayer A nor Accountant E were aware that Taxpayer A and his spouse's joint modified adjusted gross income ("MAGI") would exceed \$100,000 for 2009. Taxpayer A then established Roth IRA Y at Financial Institution F. Taxpayer A converted Amount B from IRA X to Roth IRA Y on December 24, 2009. On December 30, 2009, Taxpayer A made an additional conversion of a small amount (Amount C) from IRA X to Roth IRA Y.

In 2010, Taxpayer A received a 1099-R from Financial Institution F for 2009 reflecting an amount that included the distribution of Amount C, as well as the required minimum distributions he received in 2009. However, due to a coding error by Financial Institution F, the 1099-R did not include the distribution of Amount B.

In March 2010, Taxpayer A had Accountant E prepare his 2010 Federal income tax return. Taxpayer A provided Accountant E with the 1099-R received from Financial Institution F, but did not discuss the 2009 Roth IRA conversions with Accountant E at that time. Taxpayer A and his spouse file a joint tax return. Due to some unanticipated income, Taxpayer A and his spouse's joint MAGI for 2009 in fact exceeded \$100,000, making him ineligible for a Roth conversion. Relying on the erroneous Form 1099-R, Accountant E assumed that Taxpayer A had not taken a distribution of Amount B and thus had not done a Roth conversion in 2009 as she had suggested. Accountant E thus did not advise Taxpayer A that he was not eligible to make such conversion. Nor did Accountant E inform Taxpayer A of the October 15, 2010 deadline to file a regulatory election to recharacterize the conversion of Amounts B and C as contributions to a traditional IRA.

In December 2010, Taxpayer A went to Financial Institution F to inquire about doing another Roth IRA conversion for 2010. Financial Institution F investigated and discovered that the 2009 Roth IRA conversions were improper. Financial Institution F immediately issued a corrected 2009 Form 1099-R. By this time, the deadline for recharacterizing the IRA had passed. There were substantial discussions between Financial Institution F, Taxpayer A, and Accountant E regarding a recharacterization of the 2009 Roth conversion. Based on the recommendations of his advisors, Taxpayer A directed Financial Institution F to recharacterize the conversions of Amounts B & C as contributions back to IRA X. On December 30, 2010, Amount D, reflecting Amounts B and C, plus net earnings, was transferred from Roth IRA Y to IRA X.

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A be granted a period not to exceed 6 months from the date of issuance of this ruling to make an election under section 1.408A-5 of the Income Tax Regulations (the "I.T." Regulations) to recharacterize the amounts converted to Roth IRA Y in 2009 as contributions to a traditional IRA, and accordingly, that the December 30, 2010 recharacterization was timely.

With respect to your ruling request, section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations provide that, except as otherwise provided by the Secretary of the Treasury, 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 return 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 re-characterize the IRA contribution. To re-characterize 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 re-characterize 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 re-characterization, and (3) the trustee must make the transfer.

For tax years beginning prior to January 1, 2010, section 408A(c)(3)(B) of the Code provides, in relevant part, that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) in excess of \$100,000 for a taxable year is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during the taxable year.

Section 1.408A-4, Q&A-2, of the I.T. Regulations relating to taxable years prior to January 1, 2010, provides that an individual with MAGI in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Section 1.408A-4, Q&A-2 further provides that an individual and his spouse must file a joint Federal income tax return to convert a traditional IRA to a Roth IRA, and that the MAGI subject to the \$100,000 limit for a taxable year is the MAGI derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the P&A Regulations, in general, provide guidance concerning requests for relief submitted to the Internal Revenue Service (the "Service") on or after December 31, 1997. Section 301.9100-1(c) of the P&A Regulations provides that the Commissioner of the Service, in his discretion, may grant a reasonable extension of the time fixed by 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 P&A 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 P&A 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 P&A 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 the regulatory 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 P&A 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.

Taxpayer A's ruling request requires the Service to determine whether he is eligible for relief under the provisions of section 301.9100-3 of the P&A Regulations.

In this case, Taxpayer A's MAGI exceeded \$100,000 for 2009. While Taxpayer A was ineligible to convert Amounts B and C from IRA X to Roth IRA Y, he was

unaware at the time of the conversions that his MAGI would exceed the limit, and he was further unaware that he should have recharacterized such contributions until after the deadline for recharacterization had passed. Taxpayer A filed this request for relief under section 301.9100 of the P&A Regulations shortly after discovering he had missed the deadline for the conversion and before the Service discovered the failure to make a timely election to recharacterize the Roth IRA.

With respect to Taxpayer A's request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of sections 301.9100-1 and 301.9100-3 of the P&A Regulations have been met, and that Taxpayer A reasonably relied on the advice of a tax professional who, due to the incorrect 1099-R issued by Financial Institution F, failed to advise him to make the election to recharacterize the conversion of Amounts B and C. Specifically, we conclude that Taxpayer A has met the requirements of clauses (i) and (v) of section 301.9100-3(b)(1) of the P&A Regulations. In addition, since Taxpayer A submitted this request for an extension prior to the closing of the statute of limitations for the year that would have been affected by the election had it been timely made, we conclude that the interests of the Government will not be treated as prejudiced. Therefore, Taxpayer A is granted an extension of 60 days from the date of the issuance of this letter ruling to recharacterize the conversion of Amounts B and C to Roth IRA Y as contributions to a traditional IRA, and thus, the December 30, 2010 transfer of Amounts B and C, plus net earnings, from Roth IRA Y to IRA X will be regarded as a timely recharacterization.

No opinion is expressed as to the tax treatment of the transaction described in this letter under the provisions of any other section of the Code, I.T. Regulations, or P&A Regulations which may apply to it.

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 taxpayer who requested it. Section 6110(k)(3) of the Code 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 a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact ***** at (***) ***-
****. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC:

