



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201506015

NOV 10 2014

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

SE: T. EP. RA: T3

Legend:

Taxpayer A =

Company F =

Financial Advisor E =

Company D =

Investment H =

Individual G =

Year 1 =

Amount B =

Amount C =

IRA X =

Roth IRA Y =

Date 1 =

Date 2 =

Dear :

This is in response to your letter dated December 11, 2012, submitted on your behalf, by your authorized representative, in which you request a ruling under section 408A of the Internal Revenue Code (Code) and 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 the title holder of IRA X. On December 30, 2010, Taxpayer A converted IRA X to Roth IRA Y. The amount of the conversion was Amount B. On January 12, 2011, following the advice of Financial Advisor E, Taxpayer A invested Amount C from Roth IRA Y in Company F. Financial Advisor E worked closely with the individual who oversaw the investment program of Company F. Company F had assets under management with Company D. Individual G is the principal of Company D. Company D serves as the umbrella company for Individual G's investment management business and the manager and managing company of commodity pools known as Investment H. Individual G served as the senior advisor for Investment H.

On Date 1, the U.S. Commodity Futures Trading Commission (CFTC) filed an emergency action in the U.S. District Court for the Northern District of Illinois to freeze the assets under the control of Individual G and Company D. The CFTC's complaint alleges that the defendants operated a series of commodity pools called Investment H and that the defendants made fraudulent misrepresentations and omissions in connection with significant losses sustained by Investment H through periodic account statements. On Date 2, Company F issued a "Critical Information Update" that announced that Company F was placed in voluntary liquidation.

Taxpayer A did not discover that there were problems with his investments until after the deadline for making a timely recharacterization, as prescribed in section 408A(d)(6) of the Code. Taxpayer A then was advised by his accountant to request a ruling for an extension of time to recharacterize the contribution to Roth IRA Y as a contribution to a traditional IRA. The assets have never left Roth IRA Y. Because of the fraud outlined in the CFTC complaint it is believed that Roth IRA Y is worth significantly less than has been reported to Taxpayer A in annual statements, if not entirely worthless.

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 to Roth IRA Y as a contribution to a traditional IRA.

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

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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-(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, because Company D was providing false statements regarding the value of the investments to Company F, Taxpayer A was not aware of the fact that the value of the assets rolled over into the Roth IRA had declined 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.

Under the set of circumstances described above, Taxpayer A satisfies the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i) and (iii) In addition, although the statute of limitations is closed, since the request was filed timely and granting relief will not result in Taxpayer A having a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer A would have had if the election had been timely made, we find that under section 301.9100-3(c)(1) of the Regulations, granting relief will not prejudice the interests of the Government.

Accordingly, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contribution to Roth IRA Y as a contribution to a traditional IRA.

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 \_\_\_\_\_, I.D. # \_\_\_\_\_  
at ( ) \_\_\_\_\_

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose

cc: