COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

20160347

OCT 21 2015

UIL No.: 9100.00-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Taxpayer B =

Traditional IRA C =

Traditional IRA D =

Roth IRA E =

Roth IRA F =

Roth IRA G =

Roth IRA H =

Roth IRA I =

Tax Advisor J =

Financial Institution K =

Financial Institution L =

Partnership M =

State N =

Amount 1 =

Amount 2 =

Dear :

This is in response to a letter dated March 27, 2015, as supplemented by correspondence dated July 6, 2015, and August 19, 2015, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations") on your behalf. You submitted the following facts and representations in connection with your request.

Taxpayer A maintained two traditional IRAs, Traditional IRA C and Traditional IRA D, as defined under section 408(a) of the Internal Revenue Code (the "Code"). Financial Institution I was the custodian of Traditional IRA C and Traditional IRA D.

Taxpayer A was a partner in Partnership M, a limited liability company established in State N for the purpose of investing in real estate. Taxpayer A was a general partner of Partnership M and a guarantor of loans taken out by Partnership M. Due to a downturn in the market, Partnership M sold its real estate at a loss and terminated in 2010.

Tax Advisor J prepared the federal tax returns of Partnership M and the jointly filed federal Income Tax Return of Taxpayer A and Taxpayer A's spouse, Taxpayer B. In preparing Taxpayer A's 20 federal Income Tax Return, Taxpayer A's tax advisor, Tax Advisor J, advised Taxpayer A that in light of Taxpayer A's personal guarantee of the Partnership M loans, Taxpayer A was entitled to a deduction for his share of Partnership M's loss. Taxpayer A was not able to utilize the loss for the 20 year, which was carried forward to the 20 tax year.

In 2011, Taxpayer A requested advice from Tax Advisor J regarding the tax consequences of converting his Traditional IRAs C and D into Roth IRAs. Tax Advisor J advised Taxpayer A that a conversion would be timely and beneficial because the gain would be offset by the Partnership M loss that was carried forward to the 2011 year. In October of 2011, in reliance on Tax Advisor J's advice, Taxpayer A converted Traditional IRA C into Roth IRA E and Traditional IRA D into Roth IRA F. Financial Institution K was the custodian of Roth IRA E and Roth IRA F. In 2014, Roth IRA E was transferred to a new custodian, Financial Institution L, and was split into Roth IRA G and Roth IRA H. Roth IRA F was also transferred to Financial Institution L and became Roth IRA I.

In 2013, the IRS audited Taxpayer A's federal Income Tax Return, and disallowed the loss due to State N law which protected Taxpayer A from personal liability with respect to the Partnership M loans. In March of 2014, Taxpayer A met with a tax attorney who informed him that under State N law, Taxpayer A was not liable for the loans of

Partnership M and he was not entitled to deduct his share of Partnership M's loss to offset the gains from the conversions of Taxpayer A's traditional IRAs into Roth IRAs. Taxpayer A represents that he does not have the means to the pay the resulting tax owed without liquidating a significant portion of Taxpayer A's Roth IRAs.

Taxpayer A represents that he and Taxpayer B filed timely tax returns, including extensions, for the 20 and 20 years.

Based on the above facts and representations, you request an extension of time in which to recharacterize Roth IRAs G, H, and I back into traditional IRAs pursuant to section 301.9100-3 of the Regulations.

With respect to your request for relief under section 301.9100-3 of the Regulations, Code section 408A(c)(3) provides 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 that taxable year.

Section 1.408A-4, Q&A-2 of the federal Income Tax Regulations (the "I.T. Regulations") provides that an individual with modified adjusted gross income in excess of $ 100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year.

Code section 408A(d)(6) and section 1.408A-5, Q&A-1 of 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. 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 if the taxpayer (i) requests relief under section 301.9100-1 before the failure to make a timely election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) reasonably relied upon the written advice of the Service; or (v) 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.

The information and documentation submitted in this case are consistent with Taxpayer A's assertion that he would not have converted Traditional IRAs C and D into Roth IRAs E and F, respectively, absent Tax Advisor J's erroneous advice that Taxpayer A could report his share of the losses sustained by Partnership M. Because Tax Advisor J was not aware that his advice was erroneous, he failed to inform Taxpayer A of the election that could have been made under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, and thus Taxpayer A was unaware of the necessity of making the election. Taxpayer A's failure to recharacterize Roth IRA E and Roth IRA F on or before the date prescribed by law, including extensions, for filing Taxpayer A's 2011 Return, was caused by Taxpayer A's reasonable reliance on a qualified tax professional, who failed to advise Taxpayer A to make the election. Under the set of circumstances in this case, Taxpayer A satisfies the requirements of section 301.9100-3(b)(1)(iii) and (v) of the Regulations.

In addition, although the statute of limitations is closed, since this 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, granting relief under section 301.9100-3 of the Regulations will not prejudice the interests of the government.

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 IRAs G, H and I back to traditional IRAs.

This letter assumes that the above IRAs qualify under Code section 408 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 has been sent to your authorized representative in accordance with a power of attorney on file with this office.

Should you have any concerns regarding this ruling, please contact , , at .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of letter
Notice 437

cc: