



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

OCT 21 2015

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 9100.00-00

SE: T: EP: RA: T 1

LEGEND:

- Taxpayer A =
- Taxpayer B =
- Tax Preparer C =
- Company D =
- Roth IRA X =
- Amount 1 =

Dear

This is in response to your letter dated April 1, 2015, submitted on your behalf, by your authorized representative, in which you request a ruling under section 408A of the Internal Revenue Code (the "Code") and under section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations").

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

Taxpayer A and Taxpayer B, (referred to collectively as the "Taxpayers") are married and file joint returns. In 2002, Taxpayer A established Roth IRA X, with Company D. Taxpayer A represents that she is the title holder of Roth IRA X. Taxpayer A funded Roth IRA X with a contribution equal to Amount 1, which was to be allocated to the 20 tax year. Taxpayer A made monthly contributions to Roth IRA X for tax years 20

through 20 . For tax years 20 through 20 , Taxpayer A's contributions to Roth IRA X did not exceed the annual Roth IRA contribution limits and no reductions applied due to the Taxpayers' modified adjusted gross income for those years.

In March of 2013, Taxpayer A and Taxpayer B met with a CPA to develop a comprehensive retirement plan. The CPA determined that from 2006 through 2012, the Taxpayers had income over the limits for Roth IRA contributions. The CPA also discovered that in 2005, the Taxpayers' contribution amount exceeded the phased out Roth IRA annual contribution limit. Tax Return Preparer C, who had prepared the Taxpayers' returns from 19 through 20 , did not inform the Taxpayers of any income limitations for contributing to Roth IRAs. Acting on the advice of their CPA, Taxpayer A timely recharacterized her 2012 contribution to Roth IRA X as a contribution to a traditional IRA by a transfer to a traditional IRA account with Company D.

Taxpayer A did not discover that there were problems with her eligibility to contribute to a Roth IRA until after the deadline for making timely recharacterizations for 2005 through 2011, as prescribed in section 408A(d)(6) of the Code. The Taxpayers were advised by their attorney to request a ruling for an extension of time to recharacterize the contributions to Roth IRA X as contributions to a traditional IRA for 2005 through 20 . The Taxpayers did not request to amend previously filed tax returns for tax years 20 to 20 to claim a deduction for contributions to a traditional IRA. The assets have never left Roth IRA X. The Internal Revenue Service (the "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 excess contributions to Roth IRA X for tax years 20 through 20 .

With respect to your ruling request, section 408A(d)(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. 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 a contribution to a Roth IRA as having been made to a traditional IRA the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount; 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 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) if the taxpayer reasonably relied upon the written advice of the Service; or (v) if 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.

In the present case, Taxpayer A did not become aware of the fact that the contribution to Roth IRA X for the 2005 tax exceeded the phased out Roth IRA contribution limit, and that the contributions to Roth IRA X for years 2006 through 2011 exceeded the level at which contributions to Roth IRAs are permitted, until after the deadlines for making timely recharacterizations had passed. Therefore, Taxpayer A was unaware of the necessity of making the election. Further, Taxpayer A represents that she relied upon Tax Preparer C to advise her regarding the ability to make Roth IRA contributions, and Tax Preparer C did not inform her about the income limits or raise the fact that the Taxpayers' income had exceeded the limits. Upon realizing the need to make the election, Taxpayer A, in a timely manner, and before the Service discovered the failure to make the election, submitted this request for relief under section 301.9100-3 of the Regulations.

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 (v). In addition, although the statute of limitations is closed for most of the years involved, the Taxpayers are not seeking relief to file amended returns for closed years and granting relief will not result in the taxpayers having a lower tax liability in the aggregate for all taxable years affected by the election than they would have had if the election had been timely made. Thus, 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 of Amount 1 to Roth IRA X, and the net income earned on Amount 1, as a contribution to a traditional IRA.

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

This letter is directed only to the taxpayers 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 your authorization on file in this office.

201603048

If you wish to inquire about this ruling, please contact to
Please address all correspondence

at

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

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

Cc: