



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

201617019

JAN 27 2016

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIL No.: 9100.00-00

T. EP. RA. T2

Legend:

Taxpayer A =

Traditional IRA B =

Roth IRA C =

Financial Institution D =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This is in response to a letter dated July 22, 2015, as supplemented by correspondence dated October 1, 2015, November 10, 2015, December 3, 2015, and January 5, 2016, 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 owned a traditional IRA, Traditional IRA B, which was maintained by Financial Institution D. Taxpayer A represents that in January of 2013, he instructed Financial Institution D to deposit Amount 2 into a new traditional IRA account as an after-tax contribution. However, Financial Institution D mistakenly deposited Amount 2 into Traditional IRA B. After the contribution, Taxpayer A's Traditional IRA B held pre-

tax contributions and earnings equal to Amount 1, and Amount 2, with a total balance equal to Amount 3. Believing that Amount 2 had been deposited into a separate IRA, Taxpayer A requested that Amount 2 be rolled over into a new Roth IRA Account, Roth IRA Account C. Financial Institution D, however, misunderstood Taxpayer A's instructions and converted Traditional IRA B into Roth IRA C by transferring Amount 3, the entire balance in Traditional IRA B, to Roth IRA C.

In February 2014, Taxpayer A received a Form 1099-R from Financial Institution D which reported the total distribution from Traditional IRA B equal to Amount 3. The distribution code on the Form 1099-R identified in Box 7 was "2," indicating that an exception for an early distribution applied. Based on the form, Taxpayer A believed that the rollovers had been properly made, and he and his tax preparer indicated on Taxpayer A's 2014 federal Income Tax Return that the distribution of Amount 3 was not taxable. Taxpayer A first learned that Amount 1 had been rolled over into Roth IRA C when he received a Notice of Deficiency from the Service.

Based on the above facts and representations, you request an extension of time in which to recharacterize Amount 1 back into Traditional IRA B by a trustee-to-trustee transfer of Amount 1 plus earnings thereon to Traditional IRA B 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(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 did not intend to convert Traditional IRA B into a Roth IRA and that given the Form 1099-R he received from Financial Institution D, he was unaware that Amount 1 had been rolled over into Roth IRA C. Taxpayer A also relied on his professional tax preparer to prepare his return for the 20th year. His tax professional did not advise him that Amount 1 was a taxable distribution and 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. Thus, Taxpayer A was unaware of the necessity of making the election. Taxpayer A's failure to recharacterize Amount 1 in Roth IRA C on or before the date prescribed by law, including extensions, for filing Taxpayer A's 20th 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.

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 Amount 1 plus earnings from Roth IRA C back to Traditional IRA B.

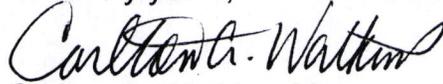
This letter assumes that the above IRAs qualify under Code section 408 and 408A at all relevant times.

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, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of letter
Notice 437

cc: