



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201635013

JUN 01 2016

UIL No.: 9100.00-00

SET: EP:RA:TI

Legend:

Taxpayer A =

Taxpayer B =

IRA C =

Roth IRA D =

Financial Institution E =

Company F =

Amount 1 =

Dear :

This is in response to a letter dated January 15, 2016, as supplemented by correspondence dated March 31, 2016, and April 13, 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 and her spouse, Taxpayer B ("Taxpayers"), file a joint federal income tax return. Taxpayer A owned IRA B, which was maintained by Financial Institution E. Taxpayer A represents that on the advice of Company F, she converted traditional IRA C into Roth IRA D on December 27, 2012. In February of 2013, Company F recommended that Roth IRA D be recharacterized back into a traditional IRA due to the cost of the conversion. On April 13, 2013, Taxpayer A submitted a request to Financial Institution E for a withdrawal from Roth IRA D, and checked the box "recharacterization"

as the reason for the distribution. On December 4, 2013, however, Taxpayer B received notice from Financial Institution E that the recharacterization request could not be processed without filing an application for a traditional IRA and paying a fee. Taxpayer B represents that he paid the fee and again submitted a request to recharacterize Roth IRA D. On June 12, 2014, Taxpayer B received further correspondence from Financial Institution E stating that it would re-open the traditional IRA account in order to effectuate the recharacterization.

Taxpayer A and Taxpayer B represent that they filed their 1040 Tax Return for the year on a timely basis; however, they did not report the Roth IRA conversion on that return. The Taxpayers did not file an amended return for the year to reflect the conversion. On August 18, 2014, the Taxpayers received a Notice of Deficiency from the IRS regarding the conversion into a Roth. After receiving the notice, Taxpayer A submitted this request.

Taxpayer A states that the initial reason for converting her traditional IRA into a Roth IRA was because of anticipated large returns on her investments. Subsequently, the assets in Roth IRA D declined in value due to alleged fraud. Taxpayer A argues that the fraudulent and illegal activities were outside of her control, as was Financial Institution E's rejection of the request to recharacterize Roth IRA D back to a traditional IRA.

Based on the above facts and representations, you request an extension of time in which to recharacterize Roth IRA D back into a traditional IRA 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 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 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(b)(3) of the Regulations provides that for purposes of paragraph (b), a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

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 do not support Taxpayer A's assertion that she satisfies the criteria in section 301.9100-3(b)(1) of the Regulations.

Taxpayer A and Taxpayer B requested relief after the Service discovered that Roth IRA D had not been recharacterized back into a traditional IRA, and Taxpayer A and Taxpayer B were aware of the necessity of the election in February of 2013, which gave them time in which to make a timely election to recharacterize. Taxpayer A and Taxpayer B have not established that there were any intervening events beyond their control, and there was no reliance on a qualified tax professional or on the written advice of the Service.

Section 301.9100-3(b)(3) of the Regulations provides that if the facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the IRS will grant relief only when the taxpayer provides strong proof that the request for relief is not based on hindsight. Strong proof was not submitted in this case.

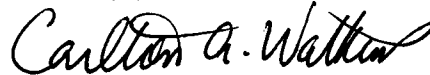
Accordingly, we are unable to grant an extension of time in which to recharacterize Roth IRA D pursuant to section 301.9100-3 of the Regulations.

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: