



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

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SEP 05 2018

UIL No.: 9100.00-00

T: EP: RA: TI

Legend:

Taxpayer A =

Taxpayer B =

Roth IRA C =

Roth IRA D =

Roth IRA E =

Roth IRA F =

Financial Institution G =

Financial Institution H =

Amount 1 =

Amount 2 =

Dear :

This is in response to a letter dated May 30, 2018, as supplemented by  
correspondence dated August 16, 2018, in which your authorized representative

requests a ruling under section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations") on your behalf.

The following facts and representations have been submitted under penalty of perjury in support of the requested ruling.

Taxpayer A and Taxpayer B are married and file joint federal income tax returns. Taxpayer A established a Roth IRA in . Taxpayer B established a Roth IRA in . In , Taxpayer A and Taxpayer B transferred their Roth IRAs to Roth IRA C and Roth IRA D, respectively. Roth IRAs C and D were maintained by Financial Institution G.

For tax year ending December 31, , Taxpayer A contributed Amount 1 to Roth IRA C. For , Taxpayer A again contributed Amount 1 to Roth IRA C. Subsequently, Taxpayer A moved the assets of Roth IRA C to Roth IRA E, which was maintained by Financial Institution H. Taxpayer A contributed Amount 1 to Roth IRA E for the tax year. Taxpayer A's total Roth IRA contributions for years through were equal to Amount 2.

For tax year Taxpayer B contributed Amount 1 to Roth IRA D. For Taxpayer B again contributed Amount 1 to Roth IRA D. Subsequently, Taxpayer B moved the assets of Roth IRA C to Roth IRA F, which was maintained by Financial Institution H. Taxpayer B contributed Amount 1 to Roth IRA F for the tax year. Taxpayer B's total Roth IRA contributions for years through were equal to Amount 2.

Taxpayers A and B worked with a financial planner and Financial Institutions G and H in establishing and funding their Roth IRAs. Taxpayer A and Taxpayer B also used a software program to prepare their Form 1040 returns. In February of , while researching the maximum allowable contribution to a Roth IRA, Taxpayer A and Taxpayer B first became aware that they were not eligible to make Roth IRA contributions because their modified adjusted gross income for tax years through exceeded the applicable limit. Taxpayer A and Taxpayer B immediately sought professional advice and filed this request for relief. Taxpayer A and Taxpayer B also filed Form 5330 for tax years ending December 31, through December 31, . This request was made prior to discovery of the error by the Internal Revenue Service. Taxpayers A and B represent that they filed timely tax returns for years and

Based on the above facts and representations, Taxpayer A requests an extension of time to recharacterize the Roth IRA contributions made to Roth IRAs C and E for tax years , and , which total Amount 2, as having been made to traditional IRAs pursuant to section 301.9100-3 of the Regulations.

Taxpayer B requests an extension of time to recharacterize the Roth IRA contributions made to Roth IRAs D and F for years , and , which total Amount 2, as

having been made to traditional IRAs pursuant to section 301.9100-3 of the Regulations.

With respect to your ruling requests, 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.

Taxpayer A and Taxpayer B submitted their ruling requests prior to the IRS's discovery of the failure to make timely elections for the , and tax years. Under the set of circumstances in this case, Taxpayer A and Taxpayer B satisfy the requirements of section 301.9100-3(b)(1)(i) of the Regulations. In addition, the granting of relief does not prejudice the interests of the Government because the statute of limitations on the assessment and collection of tax on the excess contributions remains open.

With respect to Taxpayer A's ruling request, 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 the contributions made to Roth IRAs C and E for the , and tax years, which total Amount 2, plus related earnings on the contributions, to a traditional IRA.

With respect to Taxpayer B's ruling request, we rule that, pursuant to section 301.9100-3 of the Regulations, Taxpayer B is granted a period not to exceed 60 days from the date of this letter to recharacterize the contributions made to Roth IRAs D and F for the , and tax years, which total Amount 2, plus related earnings on the contributions, to a traditional IRA.

This letter assumes that the above IRAs qualify under Code section 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.