



**Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Employee Plans**

Uniform Issue List: 9100.00-00

June 28, 2022

Number: **202238020**

Release Date: 9/23/2022

LEGEND:

Taxpayer A =

Roth IRA B =

Financial Institution C =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Dear _____ :

This is in response to your letter dated _____, as supplemented by correspondence dated _____, and _____, submitted on your behalf by your authorized representative, in which you request a ruling under section 1.408A-5, Q&A 6 of the federal Income Tax Regulations (the "I.T. Regulations") and section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations").

You submitted, under penalties of perjury, the following facts and representations in support of your ruling request.

Taxpayer A established Roth IRA B with Financial Institution C in _____. Taxpayer A contributed to her Roth IRA B in Year 1 through Year 4. In Year 5, Taxpayer A discovered she was ineligible to make Roth contributions when her daughter informed her that she was over the modified adjusted gross income limit for Years 1 through 4. In Year 1, Taxpayer A was age 52.

Taxpayer A has limited her request to the following amounts contributed to Roth IRA B: Amount 1 for Year 1, Amount 2 for Year 2, Amount 3 for Year 3, and Amount 4 for Year 4, the total of which equals Amount 5. Taxpayer A represents that none of the amounts contributed to Roth IRA B were conversions or rollover contributions made after _____.

Taxpayer A represents that the Internal Revenue Service (the "Service") has not independently discovered Taxpayer A's failure to make timely recharacterizations. Taxpayer A states that she timely filed her Federal income tax return for Years 1 through 4. Taxpayer A's filing status for these years was married filing jointly.

Based on the above facts and representations, Taxpayer A requests a ruling that, pursuant to section 301.9100-3 of the Regulations and section 1.408A-5, Q&A 6 of the I.T. Regulations, Taxpayer A be granted an extension of time to recharacterize her Roth IRA B contributions equal to Amount 1, Amount 2, Amount 3, and Amount 4 in Year 1, Year 2, Year 3, and Year 4, respectively, which total Amount 5, as nondeductible contributions to traditional IRAs for each of these years.

With respect to your ruling request, section 408A(d)(6) of the Internal Revenue Code (the "Code") and section 1.408A-5 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 contribution.

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 of the contribution and net income allocable to the contribution.

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 the Commissioner's 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 and declarations described in section 301.9100-3(e)) 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, except as provided in section 301.9100-3(b)(3)(i) through (iii), a taxpayer will be deemed to have acted reasonably and in good faith: (i) if its request for relief under this section 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 (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) if the taxpayer reasonably relied on 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 filed this request for relief before the Service discovered her failure to make timely recharacterizations. Thus, Taxpayer A satisfies section 301.9100-3(b)(1)(i) of the Regulations. In addition, Taxpayer A is not seeking relief to file amended returns for closed years 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 she 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 contributions to Roth IRA B of Amount 1, Amount 2, Amount 3, and Amount 4 for Year 1, Year 2, Year 3, and Year 4, respectively, which total Amount 5, as contributions to a traditional IRA. The recharacterization must otherwise comply with section 1.408A-5 of the I.T. Regulations including the transfer of net income attributable to the contributions being recharacterized.

This letter assumes that Roth IRA B qualifies under section 408A of the Code at all relevant times.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Copies of this letter have been sent to your authorized representatives in accordance with your authorization on file in this office.

If you wish to inquire about this ruling, please contact _____, Badge No. _____,
Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Cassandra Burns, Acting Manager
Employee Plans Technical Group 1

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

Cc: