



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

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Uniform Issue List Number 9100.00-00

SET:EP:RA:T1

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Legend:

- Taxpayer A = \*\*\*\*\*  
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- Taxpayer B = \*\*\*\*\*  
\*\*\*\*\*
- Financial Institution C = \*\*\*\*\*  
\*\*\*\*\*
- Financial Institution D = \*\*\*\*\*
- IRA E = \*\*\*\*\*  
\*\*\*\*\*
- IRA F = \*\*\*\*\*  
\*\*\*\*\*
- Amount 1 = \*\*\*\*\*
- Amount 2 = \*\*\*\*\*
- Amount 3 = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to a letter dated \*\*\*\*\* \*\*, \*\*\*\*, submitted by your authorized representative on your behalf, as supplemented by additional correspondence dated \*\*\*\*\* \*\*, \*\*\*\*, in which your authorized representative

requested relief on your behalf under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("regulations").

In support of your request for relief you have submitted the following facts and representations:

Taxpayers A and B ("Taxpayers") are spouses who filed their joint Federal Income Tax Return for calendar year \*\*\*\* on \*\*\*\*\*, \*\*\*\*, under a valid extension. The Taxpayers declared Amount 1 as their \*\*\*\* adjusted gross income ("AGI") on that return.

During \*\*\*\*, Taxpayer A owned and maintained IRA E, a traditional individual retirement arrangement ("IRA"), as described in section 408(a) of the Internal Revenue Code ("Code"), and maintained by Financial Institution C as custodian. During calendar year \*\*\*\*, Taxpayer A transferred Amount 2, consisting of the assets of IRA E, to IRA F, a Roth IRA also maintained by Financial Institution C as custodian.

Taxpayer A received a Schedule K-1 ("Partner's Share of Income Deductions, Credits, etc.") from Financial Institution D, dated \*\*\*\*\*, \*\*\*\*. This Schedule K-1 reported Amount 3 as additional interest, dividend, and capital gain income for \*\*\*\*. The Taxpayers mistakenly omitted Schedule K-1 from their \*\*\*\* return.

In \*\*\*\* of \*\*\*\*, the Taxpayers amended their \*\*\*\* tax return, and filed it with the Internal Revenue Service (IRS). The amended return reported income of Amount 2 from Schedule K-1. The income reported from Schedule K-1 increased the Taxpayers' modified AGI to an amount in excess of \$100,000. As a result, Taxpayer A was not eligible to convert a traditional IRA to a Roth IRA during the \*\*\*\* calendar year. The Taxpayers indicated on their amended 2005 return that they wanted to recharacterize IRA F as a traditional IRA, but the time period during which Taxpayer A was able to recharacterize IRA F as a traditional IRA under the rules of section 408A(d)(6) of the Code and section 1.408A-5 of the Income Tax Regulations ("I.T. Regs.") had expired. At no time prior to their filing of an amended return in \*\*\*\*, \*\*\*\*, were the Taxpayers notified by the IRS that it was proposing an adjustment to the \*\*\*\* return, commencing an examination, or that it had discovered that Taxpayer A had failed to make a timely election with respect to the recharacterization of IRA F.

Based on the facts and representations provided above, Taxpayer A requests a ruling, pursuant to section 301.9100-3 of the regulations, that he be granted a non-automatic extension from the date of issuance of this ruling letter, to complete an election under section 1.408A-5 of the I.T. Regs. and to recharacterize IRA F as a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regs. 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 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. Under section 408A(d)(6) and section 1.408A-5, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's federal income tax return for the year of contributions.

Section 1.408A-5, Q and A -6 of the I.T. Regs. describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that either has been contributed to a Roth IRA or 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 specific information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Code section 408A(c)(3) provides, in relevant part, that an individual with modified AGI in excess of \$100,000 for a taxable year is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement arrangement other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2 of the I.T. Regs. provides, in summary, that an individual with modified AGI in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Furthermore, Q&A-2(b) provides that a husband and wife must file a joint Federal Income Tax Return to convert an amount to a Roth IRA, and the modified AGI subject to the \$100,000 limit for a taxable year is the modified AGI derived from the joint return using the couple's combined income.

Section 1.408A-5, Q&A-2(a) of the I.T. Regs. provides guidance with respect to the calculation of income attributable to recharacterized amounts. (See also section 1.408-4(c)(2)(ii) of the I.T. Regs.)

Sections 301.9100-1, 301-9100-2, and 301.9100-3 of the regulations, in general, provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) of the regulations 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 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) the taxpayer reasonably relied upon the written advice of the Service; or (v) 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)(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.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, you have met the requirements of sections 301.9100-1 and 301.9100-3 of the regulations, and that you have acted reasonably and in good faith with respect to making the election to recharacterize your failed conversion as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clause (i) of section 301.9100-3(b)(1) of the regulations in that you filed your amended return before the Service discovered that a timely election had not been made.

Therefore you are granted a period of 60 days from the date of the issuance of this letter ruling to recharacterize Amount 2, plus earnings thereon, of IRA F as a traditional IRA.

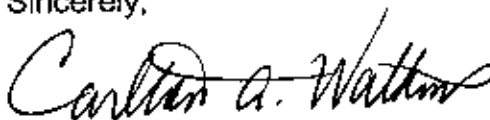
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is based on the assumption that IRA E and IRA F meet the requirements of Code sections 408 and 408A, respectively, at all relevant times.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k) provides that it may not be used or cited by others as precedent.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions pertaining to the ruling, please contact SE:T:EP:RA:T1 for further information.

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1