



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201227008

MAY 15 2012

UIL No.: 9100.00-00

T:EP:RA:RA:TI

Legend :

Taxpayer A =
Taxpayer B =
Traditional IRA C =
Roth IRA D =
Amount E =
Amount F =
Company M =

Dear :

This is in response to a letter dated August 3, 2011, as supplemented by correspondence dated January 31, February 15, February 23, and March 30, 2012, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "P&A Regulations") on your behalf. You submitted the following facts and representations in connection with your request.

Taxpayer A maintains an individual retirement arrangement ("Traditional IRA C") as described in section 408(a) of the Internal Revenue Code (the "Code"). In 2008, Taxpayer A was advised to convert Amount E from Traditional IRA C into Roth IRA D, an individual retirement arrangement as described in Code section 408A. In 2009, Taxpayer A was advised to convert Amount F from Traditional IRA C into Roth IRA D. Traditional IRA C and Roth IRA D are maintained by Company M. Taxpayer A and his wife, Taxpayer B, timely filed a joint federal Income Tax Return for the 2008 and 2009 taxable years. The 2008 taxable year is now a closed year. The 2009 taxable year is not a closed year.

In 2011, Taxpayer A was informed by his attorney that he was ineligible to make the

2008 and 2009 Roth conversions because, in each of these years, Taxpayer A's and Taxpayer B's adjusted gross income should have included dividends on which foreign taxes were withheld for each of these years. These dividends caused Taxpayer A's and Taxpayer B's modified adjusted gross income to exceed the \$100,000 limitation in Code section 408A(c)(3) in the 2008 and 2009 taxable years. In August of 2011, Taxpayer A and Taxpayer B filed amended returns for years 2008 and 2009, which reflected the inclusion of these dividend amounts in Taxpayer A's and Taxpayer B's adjusted gross income for each of these years. Also, at this time, Taxpayer A and Taxpayer B submitted this request for relief under section 301.9100-3 of the P&A Regulations for an extension of time to recharacterize Amounts E and F from Roth IRA D back into a traditional IRA. Representation has been made that Taxpayers A and B have never received any communications from the Service with regard to the 2008 and 2009 taxable years that would show the Service had discovered their failure to timely elect to recharacterize the failed conversions.

Based on your submission and the above facts and representations, you request a ruling that pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A be granted an extension of time to recharacterize Amount E and Amount F in Roth IRA D back to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the P&A Regulations, during the taxable years 2008 and 2009, Code section 408A(c)(3) provided that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) 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 plan other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2 of the federal Income Tax Regulations (the "I.T. Regulations") provides that an individual with modified adjusted gross income in excess of \$ 100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year.

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 P&A 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 P&A 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 P&A 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 P&A 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 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 P&A 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. However, section 301.9100-3(c)(1)(ii) also contemplates that the interests of the Government might not be prejudiced where closed years are involved if the amount of tax the taxpayer would pay if relief were granted to make a late election would be the same as if the election were timely made.

In this case, Taxpayer A was not eligible to convert Amounts E and F in Traditional IRA C into Roth IRA D because Taxpayer A's and Taxpayer B's modified adjusted gross

income exceeded \$100,000 in 2008 and 2009. Taxpayer A failed to recharacterize Amounts E and F from Roth IRA D back into a traditional IRA by the time permitted by law. Therefore, it is necessary to determine whether Taxpayer A is eligible for relief under the provisions of section 301.9100-3 of the P&A Regulations.

Taxpayer A was advised to convert Amounts E and F into Roth IRAs in years 2008 and 2009. Taxpayer A's and Taxpayer B's 2008 and 2009 federal Income Tax Returns, as initially filed, were timely filed and reflected the conversion of Amounts E and F. Even though Taxpayers A and B exercised due diligence, they were unaware of the necessity of the election to recharacterize Amounts E and F until 2011, after the due date for a timely election to recharacterize had passed. In 2011, Taxpayer A and Taxpayer B were advised by their attorney that they had additional income for 2008 and 2009, which caused them to exceed the modified adjusted gross income limit for each of these years. In August of 2011, Taxpayers A and B filed amended returns for 2008 and 2009 to adjust for the additional income, and requested section 301.9100-1 relief from the Service. Because Taxpayer A was unaware of the necessity of the election until after the due date had passed and he requested relief before the failure to make a timely election was discovered by the Service, Taxpayer A satisfies clauses (i) and (iii) of section 301.9100-3(b)(1) of the P&A Regulations.

Additionally, section 301.9100-3(c)(1)(ii) of the P&A Regulations contemplates that the interests of the government might not be prejudiced where closed years are involved if the amount of tax the taxpayer would pay if relief were granted to make a late election would be the same as if the election were timely made. In this case, the tax liability would be the same had a timely election been made, and Taxpayer A submitted this request for relief well before the 2008 tax year became closed under the statute of limitations. Thus, the interests of the government are not prejudiced in granting relief.

Accordingly, we rule that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter to recharacterize Amount E and Amount F in Roth IRA D back to a traditional IRA.

This letter assumes that the above traditional IRAs and Roth IRAs qualify under Code sections 408 and 408A, respectively, 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.

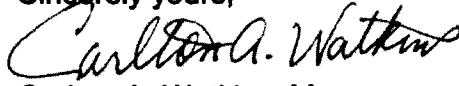
A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

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5

Should you have any concerns regarding this ruling, please contact

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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Notice 437