201301020

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT 10 2012

T:EP:RA:T1

UIL No.: 9100.00-00

Legend :

Taxpayer A =

Taxpayer B =

Traditional IRA C =

Traditional IRA D =

Roth IRA E =

Roth IRA F =

Financial Advisor G =

Tax Advisor H =

Amount 1 =

Amount 2 =

Company M =

Company N =

Company O =

Dear :

This is in response to a letter dated May 15, 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.

In 20 , Taxpayer A maintained an individual retirement arrangement ("Traditional IRA C") as described in section 408(a) of the Internal Revenue Code (the "Code") with Company N. In 2010, Taxpayer B, Taxpayer A's spouse, maintained an individual retirement arrangement ("Traditional IRA D") as described in section 408(a) with Company N. In November of 20 , Taxpayer A and Taxpayer B received information from Financial Advisor G of Company M, an affiliate of Company N, regarding the possibility of converting Traditional IRA C and Traditional IRA D into Roth IRAs. After discussing the matter further, Financial Advisor G recommended that, based on Taxpayer A's and Taxpayer B's financial situation, Taxpayer A and Taxpayer B should convert Traditional IRAs C and D into Roth IRAs. In December of 20 , pursuant to Financial Advisor G's advice, Taxpayer A converted his Traditional IRA C, equal to Amount 1, into Roth IRA E and Taxpayer B converted her Traditional IRA D, equal to Amount 2, into Roth IRA F. Both Roth IRA E and Roth IRA F are Roth IRAs described under Code section 408A. Currently, Roth IRAs E and F are maintained by Company O.

At the time of the conversions, Taxpayer A was unemployed and receiving monthly distributions from Traditional IRA C. During November and December of 20 , Taxpayer A repeatedly asked Financial Advisor G whether it was prudent to convert Traditional IRA C and Traditional IRA D into Roth IRAs based on Taxpayer A's and Taxpayer B's financial situation, and Financial Advisor G confirmed that it was. Financial Advisor G also provided Taxpayer A and Taxpayer B with an illustration of the benefits of converting their traditional IRAs into Roth IRAs; however, the illustration was based on assumptions Financial Advisor G knew did not apply to Taxpayer A and Taxpayer B.

During February of 20 , Taxpayer A and Taxpayer B met with Tax Advisor H, a certified public accountant ("CPA"), to prepare their 20 joint federal Income Tax Return. Although Tax Advisor H was aware of the monthly withdrawals from Roth IRA E and Taxpayer A's and Taxpayer B's financial situation, he failed to inform them of the tax impact of converting their traditional IRAs into Roth IRAs. Tax Advisor H also failed to inform them that they could recharacterize their Roth IRAs back into traditional IRAs to lessen their tax burden, and that the deadline for doing so was October 15, 20 . During March of 20 , Taxpayers A and B became aware of the devastating financial impact of the conversions, and the faulty advice provided by Financial Advisor G and Tax Advisor H.

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 and Taxpayer B be granted an extension of time to recharacterize Roth IRAs E and F back to traditional IRAs.

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 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 generally that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence 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 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 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.

Taxpayers A and B failed to recharacterize their Roth IRAs back to traditional IRAs by the time permitted by law. Therefore, it is necessary to determine whether Taxpayers A and B are eligible for relief under the provisions of section 301.9100-3 of the P&A Regulations.

In December of 20 , Taxpayer A and Taxpayer B were advised by Financial Advisor G to convert their traditional IRAs into Roth IRAs. However, Financial Advisor G failed to take into account that Taxpayer A was unemployed and receiving monthly distributions from Traditional IRA C. Financial Advisor G advised Taxpayer A and Taxpayer B to convert their IRAs based on faulty assumptions. In addition, Tax Advisor H failed to inform Taxpayer A and Taxpayer B of the election to recharacterize their Roth IRAs back into traditional IRAs to avoid the heavy tax burden in tax years 20 and 20 that resulted from their IRA conversions. Had Taxpayer A and Taxpayer B been provided correct information regarding the conversions by Financial Advisor G or Tax Advisor H, they would have retained their traditional IRAs, or recharacterized the conversions by the time permitted by law.

In this case, Taxpayers A and B reasonably relied on incorrect advice provided by Financial Advisor G in converting their traditional IRAs into Roth IRAs. Taxpayer A and Taxpayer B further relied on Tax Advisor H, who failed to inform them of the tax consequences regarding the conversions, and that they could recharacterize the conversions through October 15, 20 . Thus, Taxpayer A and Taxpayer B satisfy clauses (iii) and (v) of section 301.9100-3(b)(1) of the P&A Regulations because, after exercising reasonable diligence, the taxpayers were unaware of the necessity for the election, and they reasonably relied on Financial Advisor H and Tax Advisor G.

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

This letter assumes that the above 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.

Should you have any concerns regarding this ruling, please contact , at .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of letter
Notice 437

cc: