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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201506017

NOV 13 2014

Uniform Issue List: 9100.00-00

SE:T:EP:RA:T1

Legend:

Taxpayer A =

Company B =

Company C =

Plan D =

Plan E =

Plan F =

Roth IRA G =

Financial Institution H =

Financial Institution I =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This is in response to your request for a ruling dated April 30, 2014, as supplemented by correspondence dated June 24, and September 9, 2014, submitted on your behalf by your authorized representative, in which you request

relief under section 301.9100-3 of the Procedure and Administration Regulations ("P&A Regulations").

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

Taxpayer A worked many years for Company B and participated in Plan D. Taxpayer A contributed both pre-tax and after-tax contributions to Plan D. In December of 2006, Taxpayer A's entire account balance of Amount 1 in Plan D was rolled over to Plan E, also maintained by Company B. The record keeper for both Plans, Financial Institution H, erred in reporting the portion of Taxpayer A's account attributable to after-tax contributions on Form 1099-R for 2006. Amount 3 was reported as after-tax employee contributions instead of Taxpayer A's actual after-tax contributions, Amount 2.

In 2008, Financial Institution H was replaced by Financial Institution I. On May 10, 2010, as part of a bankruptcy reorganization, the name of Taxpayer A's employer, Company B, changed to Company C, and the name of Plan E was changed to Plan F.

On April 1, 2010, Taxpayer A retired. On March 23, 2012, Taxpayer A withdrew her account balance in Plan F. The distribution included her pre-tax and after-tax contributions. The pre-tax portion of her account was to be paid from Plan F to Financial Institution H to be placed in a traditional Individual Retirement Account ("IRA"). The after-tax portion of her account was to be paid to her to be rolled into Roth IRA G. The Form 1099-R for 2012, prepared by Financial Institution I, reported after-tax employee contributions of Amount 4, also in error. Amount 4 equaled the sum of the erroneous after-tax employee contributions reported in 2006 (Amount 3) and Taxpayer A's actual after-tax employee contributions (Amount 2). Taxpayer A's 2012 federal income tax return was filed in accordance with the Form 1099-R, showing Amount 4 as Taxpayer A's after-tax contributions to Plan F, and therefore was reported as being non-taxable.

In December of 2013, Company C notified Taxpayer A that the after-tax contribution amount. Amount 3, reported in 2006 had been overstated, and the error was carried forward. In addition, the after-tax contribution amount reported on Form 1099-R for 2012 was also erroneous. Financial Institution I issued a corrected Form 1099-R for 2012 which shows Amount 2, Taxpayer A's actual after-tax contributions. The erroneous computation of Taxpayer A's after-tax employee contributions in 2006 and 2012 resulted in an erroneous roll over of Taxpayer A's pre-tax contributions of Amount 3 to Roth IRA G. The ruling request is accompanied by a letter from Company C which states that when it was Company B, Financial Institution H erred when calculating Taxpayer A's after-tax employee contributions in 2006 and this error was carried forward to 2012. In addition, Financial Institution I further erred in reporting Taxpayer A's after-tax contributions in 2012.

Because of the incorrect reporting of Taxpayer A's after-tax contributions, at the time Taxpayer A rolled Amount 3 into her Roth IRA G, she was unaware of the need to recharacterize the contribution of Amount 3 as having been made to her traditional IRA in accordance with section 408A(d)(6) of the Code.

Based on the foregoing facts and representations, you have requested that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A be granted an additional period of time to recharacterize the contribution of Amount 3 to Roth IRA G (plus earnings on that amount) as a contribution made to her traditional IRA.

With respect to your request for relief under section 301.9100-3 of the P&A Regulations, Code section 408A(d)(6) and section 1.408A-5 of the federal Income Tax Regulations (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 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&A-2(c)(1) of the I.T. Regulations provides, in effect, that if the amount of the contribution being recharacterized was contributed to a Roth IRA and distributions or additional contributions have been made from or to that IRA at any time, then the net income attributable to the amount of a contribution being recharacterized is determined by allocating to the contribution a pro-rata portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula: Net Income = Contribution x (Adjusted Closing Balance – Adjusted Opening Balance)/Adjusted Opening Balance. The items in the above formula are defined in section 1.408A-5, Q&A-2(c)(2) of the I.T. Regulations.

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, in general, 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, revenue ruling, revenue procedure,

notice, or 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)) 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 the taxpayer's 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)(i) of the P&A 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 made timely.

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.

In this case, due to circumstances beyond her control, Taxpayer A was unaware she needed to elect to recharacterize the contribution of Amount 2 as having been made to her traditional IRA in accordance with section 408A(d)(6) of the Code.

With respect to Taxpayers' request for relief, and based on the information and representations submitted, the Service has concluded that Taxpayer A has met the requirements of clauses (i), (ii) and (iii) of section 301.9100-3(b)(1) of the regulations and that granting relief would not prejudice the interests of the

Government. Therefore, Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to recharacterize Amount 2 (plus earnings on that amount) in Roth IRA G to her 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 the traditional IRA and Roth IRA G described above meet the requirements of Code sections 408 and 408A, respectively, at all relevant times.

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

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), , at ( ) .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
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Notice 437

cc: