



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201627008

APR 06 2016

UIL No.: 9100.00-00

SET:EP:RA:TI

Legend:

Taxpayer A =

Plan B =

Roth IRA C =

Roth IRA D =

Financial Institution E =

Financial Institution F =

Amount 1 =

Dear :

This is in response to a letter dated November 9, 2015, as supplemented by correspondence dated March 22, 2016, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations") on your behalf. You submitted the following facts and representations in connection with your request.

Prior to 2001, Taxpayer A participated in Plan B, a qualified plan that included a cash or deferred arrangement under section 401(k) of the Internal Revenue Code ("Code"). In 2001, after leaving employment with his employer, Taxpayer A established a traditional IRA with Financial Institution E for purposes of rolling over his retirement savings in Plan B, equal to Amount 1. Taxpayer A completed the paperwork and a check was issued to the "Financial Institution E TR IRA" for the benefit of Taxpayer A. The custodian of Plan B issued a Form 1099-R for the . taxable year that identified the

taxable amount as zero and the distribution code G, which relates to a direct rollover to an IRA. Based on the Form 1099-R, Taxpayer A believed that the contribution had been made to his traditional IRA and did not include Amount 1 in his gross income for the year. However, Financial Institution E mistakenly deposited Amount 1 into Taxpayer A's Roth IRA C.

Subsequently, Financial Institution E merged with Financial Institution F, and Roth IRA C became Roth IRA D. When Taxpayer A was reviewing his retirement plans with a financial advisor from Financial Institution F, Taxpayer A discovered that Financial Institution E had mistakenly credited Amount 1 to Roth IRA C, and that Amount 1 was now held in Roth IRA D.

Based on the above facts and representations, you request an extension of time in which to recharacterize Roth IRA D into a traditional IRA pursuant to section 301.9100-3 of the Regulations.

With respect to your request for relief under section 301.9100-3 of the Regulations, 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 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 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 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 if the taxpayer (i) requests relief under section 301.9100-1 before the failure to make a timely election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) reasonably relied upon the written advice of the Service; or (v) 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.

The information and documentation submitted in this case are consistent with Taxpayer A's assertion that he intended to roll over Amount 1 from Plan B to a traditional IRA and that Financial Institution E mistakenly credited Amount 1 to Roth IRA C. Because Taxpayer A received a Form 1099-R that reflected the intended rollover into a traditional IRA, Taxpayer A was not aware that Amount 1 had been contributed to a Roth IRA, and was thus not aware of the need to make the election under section 408A(d)(6) and section 1.408A-5 of the I.T. Regulations. Taxpayer A's failure to recharacterize Roth IRA C on or before the date prescribed by law, including extensions, for filing Taxpayer A's Return, was caused by Financial Institution E's failure to follow Taxpayer A's instructions and honor the traditional IRA identified on the check from Plan B, and Taxpayer A's reliance on the information provided in the Form 1099-R, which was consistent with his instructions. Taxpayer A has requested relief under section 301.9100-1 of the Regulations before the failure to make a timely election was discovered by the Service. Therefore, under the set of circumstances in this case, Taxpayer A satisfies the requirements of section 301.9100-3(b)(1)(i) and (ii) of the Regulations.

In addition, although the statute of limitations is closed, since this request was filed timely 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 Taxpayer A would have had if the election had been timely made, granting relief under section 301.9100-3 of

the Regulations will not prejudice the interests of the government.

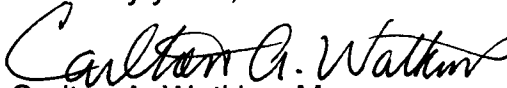
Accordingly, we rule that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter to recharacterize Roth IRA D into a traditional IRA.

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, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of letter
Notice 437

cc: