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

OFFICE OF THE CHIEF COUNSEL

November 16, 2017

CC:TEGE:EB:QP4:
CONEX-133801-17

Number: **2017-0028**
Release Date: 9/29/2017

UIL: 408.03-00, 408.11-00, 408A.00-00

The Honorable John Rutherford
Member, U.S. House of Representatives
4130 Salisbury Road, Suite 2500
Jacksonville, FL 32216

Attention:

Dear Representative Rutherford:

I am responding to your email dated September 27, 2017, on behalf of your constituents, , who asked for credit for taxes paid on after-tax contributions to his former employer's 401(k) plan because he "inadvertently" placed the after-tax contributions in a traditional individual retirement account (IRA), rather than a Roth IRA, in 2006. This inquiry is a follow-up to a previous inquiry from you on behalf of .

can get credit for the taxes he paid by completing Form 8606, Nondeductible IRAs, as explained below. In 2006, funds in a 401(k) plan could not be transferred to a Roth IRA.

Before a participant receives a distribution from an employer-sponsored retirement plan, such as a 401(k) plan, the participant gets an explanation of the various distribution options available. In 2006, a distribution from a 401(k) plan could be paid to the participant, in which case any after-tax monies distributed would be excluded from gross income. Or the funds in the plan could be paid, in a direct rollover, to another employer-sponsored retirement plan or to a traditional IRA; in this case, any after-tax monies would be excluded as they came out of the receiving plan or IRA.

Section 824 of the Pension Protection Act of 2006, Public Law 109-280, amended the Internal Revenue Code so that, for the first time, a Roth IRA could accept a rollover from an employer-sponsored retirement plan. This change was effective for distributions made after 2007.

If an individual’s traditional IRAs, when combined, contain both pre-tax and after-tax monies, the rules treat any distribution as consisting of a proportionate share of each. An individual must report such a distribution on Form 8606, Nondeductible IRAs. The instructions for line 2 of the form explain that any nontaxable portion of a rollover from a qualified retirement plan is reported on line 2. By reporting them on line 2 of the form, an individual gets credit for after-tax monies rolled into the IRA (even if the rollover was made in an earlier tax year).

Unless there is a distribution from such an IRA during a year or the owner made nondeductible IRA contributions for the year, the owner does not file a Form 8606. In other words, a Form 8606 is not filed for a year just to report a rollover of after-tax monies to a traditional IRA.

A traditional IRA owner can transfer funds (except for any part that is a required minimum distribution) from a traditional IRA to a Roth IRA at any time, but the owner must include pre-tax monies in gross income for the year of the transfer.

I hope this information is helpful. If you have additional questions, please call me or
at .

Sincerely,

Victoria A. Judson
Associate Chief Counsel
Tax Exempt and Government Entities