Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Employee Plans

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Number: **202238019**
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LEGEND:

Taxpayer A =

Taxpayer B =

Roth IRA C =

Roth IRA D =

Financial Institution E =

Financial Advisor F =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Years 1 through 8 =

Year 1 =

Year 9 =

Dear :

This is in response to your letter dated , as supplemented by correspondence dated , , , , , and , submitted on your behalf by your authorized representative in which you request a ruling under section 1.408A-5, Q&A 6 of the federal Income Tax Regulations (the "I.T. Regulations") and section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations").

You submitted, under penalties of perjury, the following facts and representations in support of your ruling request.

Taxpayer A and Taxpayer B are married and file joint Federal income tax returns. Taxpayer A and Taxpayer B established Roth IRA C and Roth IRA D, respectively, which are maintained by Financial Institution E.

For Years 1 through 8, Taxpayer A made annual contributions to Roth IRA C equal to Amount 1 each year. Taxpayer A's total Roth contributions made for these years totaled Amount 3. For Years 1 through 8, Taxpayer B made annual contributions to Roth IRA D equal to Amount 2 each year. Taxpayer B's total Roth contributions for these years totaled Amount 4. Prior to Year 1, Taxpayer A and Taxpayer B made Roth IRA contributions. Taxpayer A and Taxpayer B were eligible to make Roth IRA contributions prior to Year 1. However, for Years 1 through 8, Taxpayer A and Taxpayer B exceeded the modified adjusted gross income limit for making Roth IRA contributions.

While making Roth IRA contributions, Taxpayer A and Taxpayer B consulted with their financial advisor, Financial Advisor F, who did not inform them of the modified adjusted gross income limit for Roth contributions and did not advise them of the election to recharacterize their Roth IRA contributions.

In Year 9, after the deadline for making timely recharacterizations for Years 1 through 8, Taxpayer A met with a new financial advisor. In a consultation with the new advisor, Taxpayer A learned that Taxpayer A and Taxpayer B were not eligible to contribute to their Roth IRAs for Years 1 through 8 because their modified adjusted gross income exceeded the applicable limit for these years. The Internal Revenue Service (the "Service") has not independently discovered Taxpayer A's and Taxpayer B's failure to make timely recharacterizations. Taxpayer A and Taxpayer B represent that they timely filed their tax returns for Years 1 through 8. Taxpayer A and Taxpayer B also represent that, in the event the Service grants relief in response to this request, they will not claim a deduction for any taxable year with respect to Years 1 through 8.

Based on the above facts and representations, Taxpayer A requests a ruling that, pursuant to section 301.9100-3 of the Regulations and section 1.408A-5, Q&A 6 of the I.T. Regulations, Taxpayer A be granted an extension of time to recharacterize his contributions to Roth IRA C for Years 1 through 8, which total Amount 3, as contributions to a traditional IRA.

Based on the above facts and representations, Taxpayer B requests a ruling that, pursuant to section 301.9100-3 of the Regulations and section 1.408A-5, Q&A 6 of the I.T. Regulations, Taxpayer B be granted an extension of time to recharacterize her contributions to Roth IRA D for Years 1 through 8, totaling Amount 4, as contributions to a traditional IRA.

With respect to your ruling request, section 408A(d)(6) of the Internal Revenue Code (the "Code") and section 1.408A-5 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 contribution.

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 a contribution to a Roth IRA as having been made to a traditional IRA, the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, 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 the trustee must make the transfer of the contribution and net income allocable to the contribution.

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 the Commissioner's 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 and declarations 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 Regulations provides that except as provided in section

301.9100-3(b)(3)(i) through (iii), a taxpayer will be deemed to have acted reasonably and in good faith: (i) if its request for relief under this section 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 (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) if the taxpayer reasonably relied on the written advice of the Service; or (v) if 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 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 timely made.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced 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 the present case, Taxpayer A and Taxpayer B filed this request for relief before the Service discovered their failure to make timely recharacterizations. Taxpayer A and Taxpayer B also consulted with and reasonably relied on Financial Advisor F who failed to advise them of their ineligibility to make Roth IRA contributions and of the election to recharacterize their contributions. Thus, Taxpayer A and Taxpayer B satisfy section 301.9100-3(b)(1)(i), (iii), and (v) of the Regulations.

Under the set of circumstances described above, Taxpayer A and Taxpayer B are considered to have acted reasonably and in good faith because they satisfy the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i), (iii) and (v), and none of the circumstances described in section 301.9100-3(b)(3)(i), (ii) and (iii) apply. Although Taxpayer A and Taxpayer B are seeking relief for closed years, granting relief will not result in the Taxpayers having a lower tax liability in the aggregate for all taxable years affected by the election than they would have had if the election had been timely made. Taxpayer A and Taxpayer B will not claim a deduction with respect to any year for which relief is granted. Thus, we find that under section 301.9100-3(c)(1) of the Regulations, granting relief will not prejudice the interests of the Government.

Accordingly, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contributions totaling Amount 3 made to Roth IRA C for Years 1 through 8, as contributions to a traditional IRA. The recharacterization must otherwise comply with section 1.408A-5 of the I.T. Regulations including the transfer of net income attributable to the contributions being recharacterized.

Taxpayer B is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contributions totaling Amount 4 that were made to Roth IRA D for Years 1 through 8 as contributions to a traditional IRA. The recharacterization must otherwise comply with section 1.408A-5 of the I.T. Regulations including the transfer of net income attributable to the contributions being recharacterized.

This letter assumes that Roth IRA C and Roth IRA D qualify under section 408A of the Code 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 has been sent to your authorized representative in accordance with your authorization on file in this office.

If you wish to inquire about this ruling, please contact , Badge No. , at . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Cassandra Burns, Acting Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted copy of this letter

Cc: