



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201446036

AUG 20 2014

SE:T:EP:RA:T3

Uniform Issue List: 9100.00-00; 408A.00-00

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Legend:

Taxpayer A = \*\*\*\*\*  
Custodian C = \*\*\*\*\*  
Financial Advisor F = \*\*\*\*\*  
Amount 1 = \*\*\*\*\*  
IRA X = \*\*\*\*\*  
SIMPLE IRA Y = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your request dated April 1, 2013, submitted on your behalf by your authorized representative, as supplemented by correspondence dated May 12, 2014, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "P&A Regulations").

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

Taxpayer A owned a traditional individual retirement account (IRA X), as well as a Simple IRA account under Section 408(p) of the Code (Simple IRA Y). Custodian C

served as the custodian of both IRA X and Simple IRA Y. Taxpayer A, as an employer, established her Simple IRA Plan on forms provided by Custodian C.

Taxpayer A engaged Financial Advisor F to serve as the professional investment advisor for IRA X and Simple IRA Y. Upon Financial Advisor F's recommendation, Taxpayer A consolidated her IRA X and Simple IRA Y in order to simplify the administration and maintenance of the IRAs. Custodian C rolled over the funds from IRA X into Simple IRA Y in a trustee-to-trustee transfer on January 31, 2008. The documents you submitted demonstrate that the amount transferred from IRA X to Simple IRA Y was Amount 1.

In directing the transfer of funds, Taxpayer A relied on the advice of Financial Advisor F, and was not aware that the transfer of funds from her traditional IRA to her Simple IRA was contrary to applicable tax law and could result in the disqualification of her Simple IRA. Custodian C effected the transfer, despite the fact that under the tax law and the terms of the Simple IRA plan drafted by Custodian C, a Simple IRA may not accept a rollover or transfer from a traditional IRA.

You represent that to the best of your knowledge and belief, your federal individual income tax return for 2008 is not currently under exam by any district director of the Internal Revenue Service (the "Service"), nor is any appeals office of the Service or any federal court presently considering such return. You further represent that the tax consequences of the transfer to Simple IRA Y could result in a six-year statute of limitations with respect to the federal income tax return you filed for 2008.

Taxpayer A reported the erroneous transaction involving Simple IRA Y to the Service through an application to the Service's Voluntary Compliance Program, but upon the Service's advice subsequently withdrew that application and submitted this request for a private letter ruling.

Based on the foregoing facts and representation, you request a ruling that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A be granted a period not to exceed 60 days from the date of this ruling to recharacterize the January 31, 2008 contribution to Simple IRA Y as a contribution to a traditional IRA.

With respect to your request, section 408A(d)(6) of the Code and section 1.408A-5 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 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 return for the year of contribution.

Section 1.408A-5, Q&A-4 provides that if an amount is erroneously rolled over or transferred from a traditional IRA to a Simple IRA, the contribution can subsequently be recharacterized as a contribution to another traditional IRA.

Section 1.408A-5, Q&A-6, of the I.T. Regulations describes how a taxpayer makes the election to recharacterize an IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Simple IRA: (1) the taxpayer must notify the Simple 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, 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 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 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 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) 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 ordinarily prejudiced if granting relief would result in the 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 (taking into account the time value of money).

Section 301.9100-3(c)(1)(ii) of the P&A Regulations further provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable 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 relied on Financial Advisor F's recommendation to combine IRA X and Simple IRA Y. The transfer from IRA X to Simple IRA Y was effected by the financial institution that served as custodian of both accounts, and which had provided the documents to establish Taxpayer A's simple retirement account. Taxpayer A was unaware that such rollover could result in the disqualification of her Simple IRA Y. Taxpayer A failed to timely make the election to recharacterize the contribution to her Simple IRA Y because she was unaware that the contribution was not permissible until after the election period had expired.

Taxpayer voluntarily disclosed the problem with the transfer to Simple IRA Y to the Service by filing a Voluntary Compliance Program (VCP) application with the Service, which ultimately recommended that Taxpayer A withdraw such application and request a letter ruling permitting the recharacterization. Recharacterizing the transfer as a rollover to a traditional IRA is consistent with the manner in which the taxpayer treated the transaction on her 2008 tax return. The interests of the government would thus not be prejudiced by providing relief.

Under the circumstances described above, Taxpayer A satisfies the requirements of section 301.9100-3(b)(1) of the P&A Regulations. Accordingly, we rule that, pursuant to clauses (i) and (iii) of section 301.9100-3 of the P&A Regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contribution to Simple IRA Y as a contribution to a 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.

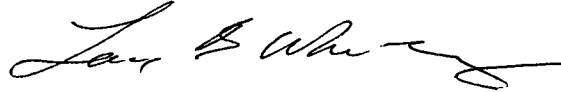
This letter assumes that the above IRAs qualify under section 408 of the Code at all relevant times.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others 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.

If you wish to inquire about this ruling, please contact \*\*\*\*\* (ID # \*\*\*\*\*)  
at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager,  
Employee Plans Technical Group 3

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

Cc: \*\*\*\*\*  
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