



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200429014

Uniform Issue List: 408.00-00

9100.00-00

APR 23 2004

SE: T. EP. RA T1

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

IRA Z =

Bank M =

Company N =

Company O =

Amount 1 =

Amount 2 =

Dear

This is in response to a ruling request dated January 30, 2004, as supplemented by additional correspondence dated February 2, 2004 and April 22, 2004, from your authorized representative, in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations have been submitted:

Taxpayer A is married to Taxpayer B. Taxpayers A and B file joint Federal Income Tax Returns.

Taxpayer A maintained IRA X, an individual retirement account described in section 408 of the Internal Revenue Code (the "Code"), with Bank M. On [redacted], on the advice of Company N, Taxpayer A converted IRA X, with Amount 1, to a Roth IRA (IRA Y) maintained with Bank M. In addition, during [redacted] Taxpayer A contributed Amount 2 to another Roth IRA (IRA Z) maintained by Bank M.

During [redacted] Taxpayers A and B's adjusted gross income exceeded the limits found in Code sections 408A(c)(3)(B) and 408A(c)(3)(C)(ii).

Taxpayers A and B timely filed their calendar year joint [redacted] Federal Income Tax Return.

With respect to the [redacted] "conversion" of IRA X to Roth IRA Y, and with respect to Taxpayer A's [redacted] contribution to Roth IRA Z, Taxpayers A and B relied on the advice of Company N who prepared Taxpayers A and B's [redacted] Federal income tax returns. Your authorized representative has asserted on your behalf that Company N did not advise Taxpayer A of the adjusted gross income limit(s) on IRA conversions and yearly Roth IRA contributions found in Code section 408A.

Company N also prepared Taxpayers A and B's [redacted] and [redacted] Federal income tax returns. Relying on incorrect information contained on year [redacted] Forms 1099-R and 5498, received from Bank M, Taxpayers A and B paid the 10% penalty tax, under Code section 72(t) for premature distributions in addition to the regular tax on an IRA distribution. Again, in completing the [redacted] and [redacted] Federal income tax returns, Company N did not advise Taxpayer A of the adjusted gross income limit(s) on IRA conversions and yearly Roth IRA contributions found in Code section 408A.

In [redacted] Taxpayers A and B contacted Company O to prepare their [redacted] income tax returns. During the preparation of Taxpayers A and B's [redacted] Federal income tax returns, Company O identified numerous errors on their [redacted] return and prepared an amended [redacted] return that was filed by Taxpayer's A and B. During the preparation of this return Taxpayers A and B mentioned they were dissatisfied with the preparation of their [redacted] Federal income tax return. Upon examination of the [redacted] return, Company O determined that Taxpayers A and B adjusted gross income for [redacted] exceeded the limits found in Code section 408A(c)(3)(B) and therefore Taxpayer A was ineligible, during year [redacted] to convert his traditional IRA to a Roth IRA and ineligible to make contributions to a Roth IRA.

This request for relief under section 301.9100-3 of the of the Regulations was submitted prior to the Service's discovering Taxpayer A's ineligibility to convert his traditional IRA X to Roth IRA Y and to make a contribution of Amount 1 to

Roth IRA Z in year 2000. On _____, Taxpayers A and B requested, through their authorized representative, that the statute of limitations on their _____ tax return be extended, therefore, calendar year _____ is not a "closed" tax year.

Based on the foregoing facts and representations, you have requested the following ruling: that, pursuant to sections 301-9100-1 and 301-9100-3 of the Regulations, Taxpayers A and B are granted a period not to exceed 60 days from the date of this ruling letter to make an election under section 1.408A-5 of the Regulations to recharacterize Taxpayer A's Roth IRA Y to a traditional IRA and the year _____ contribution of Amount 2 to Roth IRA Z to a traditional IRA.

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 of the 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, Question and Answer-6, 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.

Code section 408A(c)(3) provides, in relevant part, that an individual with adjusted gross income in excess of \$100,000 for a taxable year is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2, of the Regulations provides, in summary, that an individual with modified adjusted gross income in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Section 1.408A-4, Q&A-2, further provides, in summary, that an individual and his spouse must file a joint Federal Tax Return to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income subject to the \$100,000 limit for a taxable year is the modified AGI derived from the joint return using the couple's combined income.

Code section 408A(c)(3)(C)(ii) provides, in relevant part, that a married individual filing a joint Federal Income Tax Return may not contribute to a Roth IRA for a taxable year if his/her adjusted gross income for said year exceeds \$150,000.

Section 1.408A-3, Q&A-3, of the Regulations provides, in part, that the maximum amount of regular contributions that can be made to a Roth IRA is phased out between certain levels of modified adjusted gross income. For an individual who is married and files a joint return, the dollar amount is phased out between modified adjusted gross income of \$150,000 and \$160,000. An individual who is married and files a joint return is not eligible to make a regular contribution to a Roth IRA if the couple's combined modified adjusted gross income is \$160,000 or more.

Section 301.9100-1, 301.9100-2, and 301.9100-3 of the Procedure and Administration 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 the Internal Revenue Service, 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 temporary regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its 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's 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)(ii) of the temporary 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.

Section 301.9100-3(c)(1)(i) of the Regulations indicates that the interests of the government are prejudiced if granting relief will result in a taxpayer (or taxpayers, if more than one taxpayer is affected by the tax consequences of the election) having a lower tax liability in the aggregate for all years to which the election applies than the taxpayer (or taxpayers, if more than one is affected) would have had if the election had been made on a timely basis.

When a taxpayer is unable to meet the requirements of section 301.9100-2 of the Regulations for an automatic extension of time to make an election, as is the case here, section 301.9100-3 indicates that relief will be granted if the taxpayer provides evidence establishing that: the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

In this case, in year Taxpayers A and B were ineligible to convert Taxpayer A's traditional IRA X to Roth IRA Y since their adjusted gross income exceeded \$100,000. Further, Taxpayer A was not eligible to make a regular contribution to a Roth IRA in year since Taxpayers A and B combined modified adjusted gross income exceeded \$160,000. However, until they discovered otherwise, which discovery occurred after Taxpayer A "converted" IRA X to Roth IRA Y and after he contributed Amount 1 to Roth IRA Z, Taxpayers A and B were unaware of the requirements of section 1.408A-5 of the Regulations. Taxpayers A and B filed this request for section 301.9100 relief after filing their joint Federal Income Tax Return. With respect to Taxpayers A and B, is not a "closed" tax year. Finally, prior to Taxpayer A's and B's filing this request for relief under sections 301.9100-1 and 301.9100-3, the Internal Revenue Service had not discovered Taxpayer A and B's ineligibility to convert IRA X to Roth IRA Y nor Taxpayer's A ineligibility to make contributions to Roth IRA Z.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have been met, and that you have acted reasonably and in good faith with respect to making the election to recharacterize your Roth IRA as a traditional IRA and in recharacterizing the year 2000 contribution to a Roth IRA as a contribution to a traditional IRA. In addition, we believe that granting relief will not prejudice the interests of the government. Specifically, the Service has concluded that you have met the requirements of clauses (i) and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of 60 days from the date of the issuance

of this letter ruling to so recharacterize Roth IRA Y and Roth IRA Z to a traditional IRA (or IRAs).

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.

In order to effectuate this letter ruling, Taxpayer A and B should file an amended Federal Income Tax Return (Form 1040X) consistent therewith if they have not already done so.

This ruling is based on the assumption that IRA X and Roth IRA Y and Roth IRA Z meet the requirements Code sections 408 and 408A (where applicable), respectively, at all relevant times.

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

Should you have any questions concerning this letter ruling, please contact *** SE:T:EP:RA:T1 at ***.

Sincerely yours,

Carlton A. Watkins,
Manager, Employee Plans Technical Group 1

Enclosures:
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