



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200529010

APR 26 2005

SE:TEP:RA:T1

Uniform Issue List: 9100.00-00

Legend:

Taxpayer A
Taxpayer B
Custodian M
IRA X

= *****
= *****
= *****
= *****
= *****
= *****
= *****

Roth IRA Y

Dear *****:

This is in response to your letter dated December 13, 2003, as supplemented by additional correspondence dated February 22, 2005, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations support your ruling request.

Taxpayer A is married to Taxpayer B. Taxpayer A maintained a traditional individual retirement arrangement ("IRA X") with Custodian M. In [redacted] after consultations with Custodian M concerning her eligibility for such a transaction, Taxpayer A converted IRA X to Roth IRA Y with Custodian M. Taxpayers A and B filed their [redacted] income tax returns on [redacted] and paid interest and penalties for late filing.

In [redacted] Taxpayers A and B first learned that they were ineligible for the above conversion because their combined adjusted gross income for calendar year [redacted]

exceeded the limit found at section 408A(c)(3)(B) of the Internal Revenue Code ("Code"). Since the time for recharacterization had passed, Taxpayers A and B, after consultations with Custodian M, believed there was no solution to the failed conversion. In 2003, after consultations with a representative of the Internal Revenue Service ("Service") and after conducting their own research, Taxpayers A and B learned that they could request a ruling from the Service regarding the failed conversion. On [REDACTED], Taxpayers A and B filed an amended joint federal Income Tax Return for [REDACTED] thus, calendar year [REDACTED] is an "open year" with respect to Taxpayers A and B.

Since the [REDACTED] conversion, the assets transferred from IRA X to Roth IRA Y have been combined with a contributory Roth IRA of Taxpayer A.

As of the date of this request, to the best of Taxpayer A's and B's knowledge, the Service has not discovered Taxpayer A's failure to make the election to recharacterize Roth IRA Y to a traditional IRA.

Based on the above facts and representations you request an extension of 60 days from the date of this ruling letter to recharacterize the 1999 transferred assets from IRA X in Roth IRA Y to 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, section 408A(d)(6) of the Code and section 1.408A-5 of the Income Tax Regulations ("I. T. Regs.") 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 to the transferor IRA. Under sections 408A(d)(6) and 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 contribution.

Section 1.408A-5, Question and Answer 6, of the I. T. Regs. describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that previously 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 specific information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Code section 408A(c)(3)(B) 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 arrangement other than a Roth IRA during that taxable year.

Section 1.408A-4, Q & A-2 of the I. T. Regs. provides, in summary, that an individual with modified adjusted gross income ("AGI") in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Q & A-2 also provides that a married individual is permitted to convert a traditional IRA to a Roth IRA only if that individual and his/her spouse file a joint federal income tax return. Furthermore, the modified AGI is the modified AGI derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the 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 time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for 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 301.9100-2. The relief requested in this case was not referenced in section 301-9100-2.

Section 301.9100-3(a) of the Regulations provides that the application for relief that falls within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits 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 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 failed to make the election because after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer 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 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.

In this case, Taxpayer A was ineligible to convert her traditional IRA X to Roth IRA Y, since the joint [REDACTED] adjusted gross income of Taxpayer A and her spouse (Taxpayer B) exceeded [REDACTED]. Even though Taxpayer A converted IRA X to Roth IRA Y, neither Taxpayer A nor B was aware of the requirements of section 1.408A-5 of the I.T. Regs. Taxpayers A and B filed this request for section 301.9100 relief after filing their joint [REDACTED] Federal Income Tax Return. With respect to Taxpayers A and B, [REDACTED] is not a "closed" tax year. Finally, the Service did not discover Taxpayer A's ineligibility to convert IRA X to Roth IRA Y prior to Taxpayers A and B filing this request for relief under sections 301.9100-1 and 301.9100-3 of the Regulations.

With respect to the request for relief, we believe that, based on the information submitted and representations contained therein, the requirements of sections 301.9100-1 and 301.9100-3 of the Regulations have been met and Taxpayer A acted reasonably and in good faith with respect to requesting an extension of time in order to recharacterize the [REDACTED] transferred assets from IRA X in Roth IRA Y to a traditional IRA. Specifically, the Service has concluded that Taxpayer A met the requirements of clauses (i), (iii), and (v) of section 301.9100-3(b)(1) of the Regulations. Therefore Taxpayer A is granted a period of 60 days from the date of this ruling letter to recharacterize the [REDACTED] transferred assets in Roth IRA Y to a traditional IRA. This ruling does not apply to any assets of Roth IRA Y that do not represent the transferred assets from IRA X in [REDACTED].

In order to effectuate this ruling letter, Taxpayers A and B should file a copy with the Internal Revenue Service Center in ***** , to be associated with the amended [REDACTED] joint income tax return (Form 1040X) currently on file.

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.

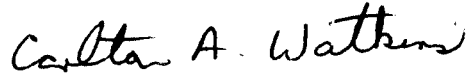
This ruling is based on the assumption that IRA X and Roth IRA Y meet the requirements of Code sections 408 and 408A (where applicable), respectively, at all relevant times.

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

200529010

If you have any questions please contact *****
***** ***** Please address all correspondence to the attention of
SE:T:TE:RA:T1

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted Copy of this Letter
- ▶ Notice of Intention to Disclose, Notice 437