



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200609021

DEC -7 2005

UIL No.: 9100.00-00

SE: T: EP: RA: TI

Legend :

Taxpayer A.....

Taxpayer B.....

IRA C.....

Roth IRA D.....

Company N.....

Dear :

This is in response to a letter dated July 29, 2005, as supplemented by correspondence dated November 9, 2005, and November 22, 2005, in which you, through your authorized representative, request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). You submitted the following facts and representations in connection with your request:

Taxpayer A maintained a traditional individual retirement arrangement (IRA), IRA C, described in section 408 of the Internal Revenue Code (the "Code"), with Company N. In June of [REDACTED] Taxpayer A converted IRA C to Roth IRA D with Company N. Taxpayer A and Taxpayer B, Taxpayer A's spouse, filed a joint Federal Income Tax Return for [REDACTED] ("Return"), for which the due date was extended to October 15, [REDACTED]. In preparing the taxpayers' return in October of [REDACTED], Taxpayer A's and Taxpayer B's CPA discovered that the taxpayers' modified adjusted gross income exceeded the \$100,000 limitation in Code section 408A(c)(3)(B) for the 2003 year. However, the taxpayers were out of the country in October of 2004 and were unable to be reached by October 15. Consequently, the Taxpayers' 2003 return was not filed until after the October 15, [REDACTED] due date. Unaware of his ineligibility, Taxpayer A failed to timely recharacterize Roth IRA D back to a traditional IRA by October 15, [REDACTED].

Based on the above facts and representations, you request a ruling that pursuant to section 301.9100-3 of the regulations, Taxpayer A be granted an extension to

recharacterize Roth IRA D back 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 federal Income Tax Regulations (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. 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 returns for the year of contributions.

Section 1.408A-5, Question & Answer 6 of the I.T. Regulations 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 that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) 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 I.T. Regulations provides 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 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 (AGI) 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.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the regulations provide guidance concerning requests for relief submitted to the Internal Revenue Service (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 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 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 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 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 not eligible to convert his traditional IRA into a Roth IRA since Taxpayer A's and Taxpayer B's combined modified adjusted gross income exceeded \$100,000 for [REDACTED], the year of the conversion. Taxpayer A failed to recharacterize his Roth IRA back to a traditional IRA by the time permitted by law. Therefore, it is necessary to determine whether he is eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A was ineligible for the [REDACTED] Roth IRA conversion, he was unaware of his ineligibility until after the October 15, [REDACTED] due date of his [REDACTED] Return. Taxpayer A filed his request for section 301.9100-1 relief before the Service discovered his failure to make a timely election. Thus, Taxpayer A satisfies clause (i) of section 301.9100-3(b)(1). Accordingly, we rule that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period of 60 days from the date of this ruling letter to recharacterize Roth IRA D back to a traditional IRA.

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

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3)

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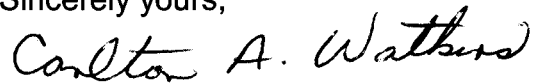
4

provides that it may not be used or cited as precedent.

The original of this letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

Should you have any concerns regarding this ruling, please contact

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

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Notice 437