



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200905034

OCT 29 2008

UIL No. 9100.00-00; 408A.00-00

SE:T:EP:RA:T4

Legend:

Taxpayer A =

Taxpayer B =

Custodian M =

Amount A =

Amount B =

Year 1 =

Year 2 =

IRA X =

IRA Y =

Dear :

This is in response to your letter dated ***, supplemented by correspondence dated ***, submitted on your behalf by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "Regulations"). Such relief is requested regarding the recharacterization of amounts rolled over to a Roth individual retirement arrangement (IRA) for taxable years in which Taxpayer A was ineligible to contribute to a Roth IRA. The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A and Taxpayer B (hereinafter referred to as "the Taxpayers") are married. The Taxpayers filed Form 1040, U.S. Individual Income Tax Return, jointly for tax Years 1 and 2.

Taxpayer A owned IRA X, a traditional IRA described in section 408 of the Internal Revenue Code (the "Code"), and maintained by Custodian M. In December of Year 1, Custodian M, at Taxpayer A's request, transferred Amount A from IRA X to IRA Y, a Roth IRA described in section 408A of the Code, as a Roth IRA conversion. In December of Year 2, at Taxpayer A's request Custodian M converted Amount B, the remaining balance in IRA X, to IRA Y. The Taxpayers reported Amounts A and B as taxable income on their Forms 1040 for tax Years 1 and 2 respectively.

The Taxpayers prepared their own Forms 1040 using a tax preparation software program for tax Years 1 and 2. While preparing the Form 1040, Taxpayer A represents that he discovered that the tax preparation software calculated an excise tax on Form 5329, Additional Taxes on Qualified Plans. Upon review of the Forms 1040 for tax Years 1 and 2, Taxpayer A discovered that an excise tax was also calculated in connection with the preparation of the tax returns. After discovering the excise tax calculations, Taxpayer A consulted with an accountant to determine the reason for the calculation of the excise tax. Taxpayer A was advised by the accountant that he was ineligible to make the conversions because his modified adjusted gross income (MAGI) exceeded \$100,000 in Years 1 and 2, and of his ability to seek relief as described in section 301.9100-3 of the Regulations.

The Taxpayers represent further that at the time of the conversions they were unaware of the requirement that their MAGI be below \$100,000 for the year of each conversion. The Taxpayers have not filed their Federal Tax Return for tax year and have applied for an automatic six-month extension of time to file until October 15, ***

Taxpayer A's request for relief under section 301.9100 of the Regulations was filed with the Internal Revenue Service (the "Service") prior to the Service discovering that Taxpayer A was not eligible to convert Amounts A and B to IRA Y, and prior to the Service discovering that Taxpayer A had not timely elected to recharacterize Amounts A and B back to a traditional IRA. The statute of limitations with respect to the Taxpayers' Federal Income Tax Return for Years 1 and 2 remains open.

Based on the foregoing facts and representations, the Taxpayers request a ruling that, pursuant to Treasury Regulations section 301.9100-1 and 301.9100-3, the Taxpayers be granted a period not to exceed six months from the date of any ruling letter issued to recharacterize amounts converted in Year 1 and Year 2, including earnings related to the recharacterized amounts, back to a traditional IRA by way of a trustee-to-trustee transfer..

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 (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. Under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, 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-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.

Section 408A(c)(3)(B) of the Code and section 1.408A-4, Q&A-2 of the Income Tax (I.T.) Regulations provide, 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, further provides, in summary, that a married individual must file a joint return in order to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income subject to the \$100,000 limit for the taxable year is the modified adjusted gross income derived from the joint return using the couple's combined income.

Section 408A(d)(3)(C) provides that a conversion of a traditional IRA to a Roth IRA is treated as a rollover from the traditional IRA to the Roth IRA.

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 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, the Taxpayers timely filed their joint Forms 1040 for tax Years 1 and 2. When they filed their Forms 1040, the Taxpayers were not aware that Taxpayer A was ineligible to make conversions from his traditional IRA X to Roth IRA Y, because they were unaware of the requirement that their MAGI income must be below \$100,000 for the year of each conversion.

The Taxpayers did not become aware that Taxpayer A's aforementioned conversions did not comply with the requirements of section 408A(c)(3) of the Code and interpreting regulations until they were preparing their Form 1040 for tax year . At that point, the time period prescribed by section 408A(d)(6) of the Code had expired. Therefore, it is necessary to determine if the Taxpayers are eligible for relief under section 301.9100-3 of the regulations.

The Taxpayers filed this request for relief under section 301.9100 of the regulations shortly after discovering that Taxpayer A was ineligible to convert his traditional IRA X to Roth IRA X because their MAGI exceeded the permissible limits.

Thus, with respect to the Taxpayer's request for relief, we believe that, based on the information and the representations submitted by the Taxpayers, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have been met, and the Taxpayers acted reasonably and in good faith with respect to requesting an extension of time in order to recharacterize Roth IRA Y as a traditional IRA. Specifically, we conclude

that the Taxpayers have met the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the regulations. Additionally, because the statute of limitations is still open, under section 301.9100-3(c)(1)(ii) of the Regulations, granting relief will not prejudice the interests of the Government.

Accordingly, the Taxpayers are granted an extension of time not to exceed 60 days as measured from the date of this letter ruling to recharacterize Amounts A and B held in Roth IRA Y, plus earnings attributable thereto, as a traditional IRA.

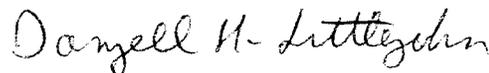
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This 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 ruling is being 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 ***, I.D. No. ***, at *** or *** (FAX). Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 4

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose, Notice 437

Cc: