



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

T:EP:RA:TA

LEGEND:

Taxpayer A =
Company P =
Sum N =
IRA X: =

612. 408.00-00

IRA Y =

Individual M =

Dear :

This is response to a letter dated August 20, 2003, as supplemented by letters dated November 19, 2003, December 12, 2003, and December 15, 2003, submitted on your behalf by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations").

The following facts and representations have been submitted:

Taxpayer A, a single individual, maintained IRA X, a traditional IRA as described in Code Section 408(a), with Company P. In April, 1999, Taxpayer A converted IRA X to IRA Y, a Roth IRA as described in Code Section 408A, also with Company P. At the time of the conversion, Taxpayer A believed that he qualified for the conversion based on a modified adjusted gross income of less than \$100,000. Taxpayer A reported the deemed income from the conversion in its entirety on his 1999 federal income tax return. Taxpayer A has represented that his 1999 federal income tax return was timely filed.

In late 2002, Taxpayer A retained Individual M to assist him in preparing amended tax returns for tax years 1996 through 2001. As a result of Individual M's review and revisions, Taxpayer A learned that he was not eligible to convert traditional IRA X to IRA Y on his 1999 federal income tax return. Taxpayer A's request for relief under section 301.9100 of the regulations was filed with the Service prior to the Service discovering that Taxpayer A was not eligible to

convert traditional IRA X to Roth IRA Y and prior to the Service discovering that Taxpayer A had not timely elected to recharacterize Roth IRA Y back to a traditional IRA.

Based on the above facts and circumstances, you request the following ruling:

That, pursuant to section 301.9100-3 of the Regulations, Taxpayer A be granted an extension of time of thirty days from the date of this letter ruling to recharacterize his Roth IRA Y back to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408(A)(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. Under section 408(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 and 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.

Section 408A(c)(3) of the Code 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, Question and Answer-2 of the I.T. 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 a taxable year.

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) of the Regulations 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 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 of the Regulations 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 upon a qualified 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 his traditional IRA X to Roth IRA Y since his modified adjusted gross income for 1999 exceeded \$100,000. However, at the time of the conversion and until he discovered otherwise, Taxpayer A believed that he was eligible to convert traditional IRA X to Roth IRA Y. Taxpayer A timely filed his 1999 federal income tax return. Taxpayer A did not learn that he was ineligible to convert traditional IRA X to Roth Y until 2002. Therefore, it is necessary to determine whether Taxpayer A is eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Although Taxpayer A was ineligible for the 1999 Roth IRA conversion, Taxpayer A did not learn of such ineligibility until 2002. Taxpayer A made his request for relief to the Service before the Service discovered Taxpayer A's ineligibility to convert traditional IRA X to Roth IRA Y. The 1999 taxable year is not closed under the statute of limitations.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained therein, the requirements of section 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 Y back to a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clause (i) of section 301.9100-3(b)(1) of the regulations. Therefore, pursuant to section 301.9100-3 of the Regulations, Taxpayer A is granted an extension of 30 days from the date of this letter ruling to so recharacterize Roth IRA Y back to a traditional IRA.

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

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 is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions regarding this ruling, please contact _____, _____, _____, at _____.

Sincerely yours,

(signed) **JOYCE E. FLOYD**

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose