



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200431016

MAY - 3 2004

UICs: 9100.00-00
408A.00-00

SE.T:EP:RA:T3

Legend:

Taxpayer A =

Taxpayer B =

Company C =

Company D =

Plan X =

IRA X =

IRA Y =

Amount C =

Amount D =

Amount E =

Individual E =

Attorney F =

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Roth IRA X =

Roth IRA Y =

State Z =

Month 1 =

Date 1 =

Dear :

This is in response to a letter dated , as supplemented by correspondence dated and , in which you, through your authorized representative, requested relief under section 301.9100-3 of the Procedure and Administration Regulations. The following facts and representations support your ruling request.

Taxpayer A is married to Taxpayer B. Taxpayers A and B own 100% of the issued and outstanding capital stock of Company C. During , Taxpayers A and B filed a joint Federal Income Tax Return (Form 1040).

Taxpayer A attained age 59 ½ in calendar year 1997. Taxpayer B attained age 59 ½ during calendar year 2001.

With respect to Company C maintained Plan X, a defined benefit pension plan which was operated in accordance with the requirements of section 401(a) of the Internal Revenue Code ("Code"). Taxpayers A and B were participants in Plan X. Plan X was terminated in Month 1, . During Month 1, Taxpayer A received a distribution with the value of Amount C from Plan X. He rolled over his Plan X distribution into IRA X, an individual retirement arrangement which met the requirements of Code section 408(a), with Company D. During Month 1, Taxpayer B received a distribution with the value of Amount D from Plan X. She rolled over her Plan X distribution into IRA Y, an individual retirement arrangement which met the requirements of Code section 408(a), with Company D.

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On or about Date 1, IRA X was "converted" to Roth IRA X, and, on the same date, IRA Y was "converted" to Roth IRA Y. Roth IRAs X and Y were maintained with Company D. On their joint Federal 1040, Taxpayers A and B elected to have the tax imposed on the amounts converted to Roth IRAs X and Y taxed ratably over a 4-year period in accordance with § 408A(d)(3)(A)(iii) of the Code.

At the time of the rollovers and throughout Taxpayers A and B believed that they were qualified to "convert" their IRA X and Y into Roth IRAs X and Y described in section 408A of the Code.

Individual E, a certified public accountant licensed to practice in State Z, assisted Taxpayers A and B in completing their joint Federal Form 1040. Individual E also assisted Taxpayers A and B in completing Company C's Corporation Income Tax Return (Form 1120). Company C's Form 1120 reflected loans of Company C's corporate funds to Taxpayers A and B totaling Amount E. Individual E did not include any portion of said loans in computing Taxpayers A and B's adjusted gross income for Thus, their Federal Form 1040 reflected an adjusted gross income that did not exceed \$100,000.

Taxpayers A and B's Federal Form 1040 has been examined by the Internal Revenue Service ("Service"). In conjunction with said examination, Taxpayers A and B have retained the services of Attorney F. During Attorney F advised Taxpayers A and B that the loans they received from Company C during were, in actuality, dividends and, thus, an addition to their adjusted gross income. Taxpayers A and B agreed with Attorney F's characterization of Amount E. Pursuant to the advice of Attorney F, Taxpayers A and B disclosed the loans to the Service. The Service then recharacterized the "loans" as dividends. As a result, Taxpayers A and B's adjusted gross income for exceeded \$100,000 and they were not eligible to "convert" their IRAs X and Y to Roth IRAs X and Y.

Since Taxpayers A and B are currently litigating other issues involving their Federal Form 1040, remains an "open" tax year.

To date, Taxpayers A and B have not "recharacterized" their Roth IRAs X and Y as traditional IRAs.

Based on the above facts and representations, Taxpayers A and B, through their authorized representative, request the following letter rulings:

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1. Taxpayer A requests an extension of 60 days measured from the date of this letter ruling to recharacterize his Roth IRA X as a traditional IRA pursuant to section 301.9100-3 of the Procedure and Administration Regulations; and
2. Taxpayer B requests an extension of 60 days measured from the date of this letter ruling to recharacterize her Roth IRA Y as 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 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 section 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 returns for the year of contributions.

Section 1.408A-5 of the regulations, 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 specific 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 account other than a Roth IRA during that taxable year.

Section 1.408A-4 of the regulations, Q&A-2, 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 further provides that a married individual is permitted to convert a traditional IRA to a Roth IRA only if the individual and his/her spouse

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file a joint Federal Income Tax Return. Furthermore, the AGI is the 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 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) 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 making of a 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(a) of the regulations provides the application 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)) 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

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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.

Announcement 99-57, 1994-24 I.R.B. 50 (June 14, 1999) provides that a taxpayer who timely filed his/her 1998 Federal Income Tax Return would have until October 15, 1999 to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Announcement 99-104, 1994-44 I.R.B. 555 (November 1, 1999) provides that a taxpayer who timely filed his/her 1998 Federal Income Tax Return would have until December 31, 1999 to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

In this case, Taxpayer A and Taxpayer B timely filed their joint Federal Income Tax return (Form 1040). When they filed their Federal Form 1040, Taxpayers A and B were not aware that they were ineligible to convert their traditional IRAs X and Y into Roth IRAs because they were unaware that the loans they received from Company C during actually constituted taxable dividends. Furthermore, Individual E did not explore the possibility that the loans may have been dividends when he assisted Taxpayers A and B in completing their Federal Forms 1040 and 1120.

Taxpayers A and B did not become aware that their conversions did not comply with the requirements of Code § Section 408A(c)(3) of the Code and interpreting regulations until advised by Attorney F during 2002. At that point, the time period prescribed by Code § 408A(d)(6) had expired. Furthermore, the extensions granted by Announcements 99-57 and 99-104 had also expired. Therefore, it is necessary to determine if Taxpayers A and B are eligible for relief under section 301.9100-3 of the regulations.

In this case, Taxpayers A and B filed this request for relief under section 301.9100 shortly after discovering that they were ineligible to convert their traditional IRAs X and Y to Roth IRAs X and Y because their conversions were tainted due to their AGI exceeding permissible limits. Furthermore, the possibility that their AGI may have exceeded said limit was not raised with Taxpayers A and B by Individual E at the time he assisted them in filing their Federal Tax forms.

Thus, with respect to Taxpayers A and B's request for relief, we believe that, based on the information and the representations contained therein, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have

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been met, and Taxpayers A and B acted reasonably and in good faith with respect to requesting an extension of time in order to recharacterize their Roth IRAs X and Y as traditional IRAs. Specifically, we conclude that Taxpayers A and B have met the requirements of clauses (iii) and (v) of § 301.9100-3(b)(1) of the regulations. Therefore, Taxpayers A and B are granted an extension of time not to exceed 60 days as measured from the date of this letter ruling to recharacterize their Roth IRAs X and Y as traditional 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.

This ruling 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 by others as precedent.

Please note that in recharacterizing Taxpayers A and B's Roth IRAs X and Y as traditional IRAs, Taxpayers A and B must file an amended calendar year Federal Income Tax Return (Form 1040) consistent therewith if they have not already done so.

If you have any questions please contact _____ I.D. _____ at _____
(Phone) and _____ (FAX).

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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Notice of Intention to Disclose, Notice 437