

200647033



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 9100.00-00; 408A.00-00

AUG 30 2006

T:EP:RA:T4

**Legend:**

Taxpayer A =

Institution X =

Firm M =

Amount A =

Amount B =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to your request dated January 31, 2006, as supplemented by correspondence dated August 18, 2006, in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations ("Regulations"). The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A was a partner in a professional services partnership that sponsored a qualified profit sharing plan that contained a section 401(k) of the Internal Revenue Code feature (the "Plan"). The professional services partnership curtailed its operations in 2002, and Taxpayer A commenced new employment in November 2002. In December 2002, Taxpayer A engaged Firm M for year-end tax planning and preparation of his 2002 Federal tax return. Among other things, Taxpayer A considered rolling over the balance of his account in the Plan to a traditional IRA. Also, since there was uncertainty as to the tax impact of the partnership's activities upon Taxpayer A's tax

position, as part of the tax planning, Firm M advised Taxpayer A to further transfer all or a portion of the traditional IRA to a Roth IRA in the event that Taxpayer A's adjusted gross income was below the \$100,000 threshold for making a rollover from a traditional IRA to a Roth IRA.

In anticipation of completing these transactions, Taxpayer A opened both a traditional IRA account and a Roth IRA account with Institution X. On Date 1, 2002, Taxpayer A completed a direct transfer of Amount A, the amount of his account balance under the Plan, to the traditional IRA. On Date 2, 2002, the day following the qualified rollover into his traditional IRA, Taxpayer A received a partial distribution from the traditional IRA of Amount B, which he transferred to the Roth IRA. At the time of the transfer, the effect of the partnership income on Taxpayer A was unknown, and Taxpayer A did not know whether he would meet the income limit in order to qualify to effect a rollover from the traditional IRA to the Roth IRA. In addition, Taxpayer A believed, based on the discussions with representatives of Firm M, that if he did not qualify to transfer Amount B into the Roth IRA, Amount B would automatically be recharacterized to a traditional IRA.

Taxpayer A extended the due date of his 2002 Federal tax return until Date 3, 2003. In early October 2003, Taxpayer A and his wife met with representatives of Firm M, at which time it was determined that Taxpayer A's adjusted gross income for 2002 exceeded the \$100,000 limit for qualifying to make a rollover to the Roth IRA. Taxpayer A and Firm M agreed that the Roth IRA would be recharacterized as a traditional IRA, and the 2002 Federal tax return was prepared on the basis that Taxpayer A had accomplished a tax deferred rollover of Amount A into a traditional IRA. Taxpayer A was not aware, and Firm M did not inform him, that in order to recharacterize his Roth IRA as a traditional IRA, specific action on Taxpayer A's part was required before the extended due date of his 2002 Federal tax return. On Date 3, 2003, when Firm M had completed preparation of Taxpayer A's 2002 Federal tax return, Taxpayer A and his wife met with Firm M representatives again to review and sign the return. Although there was brief discussion regarding the lack of qualifying for Roth IRA treatment, there was no discussion of the recharacterization or the fact that the deadline for recharacterization was expiring that day.

Firm M prepared Taxpayer A's 2003 Federal tax return, and Taxpayer A prepared his own 2004 Federal tax return without any issue regarding the Roth IRA recharacterization being identified. In November 2005, Taxpayer A met with two financial planning and investment firms to discuss their proposals for rendering comprehensive financial planning services, at which time Taxpayer A noted that Institution X was still reflecting his Roth IRA as such. When Taxpayer A engaged Firm M to prepare his 2005 Federal tax return, a different team of preparers than the team that had worked on Taxpayer A's 2002 and 2003 Federal tax returns finally informed Taxpayer A that a recharacterization required that he notify Institution X of his intent to recharacterize, and that the date for recharacterizing his Roth IRA had passed.

Since December 31, 2002, Taxpayer A has made neither withdrawals from nor further contributions to his Roth IRA.

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

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to sections 301.9100-1 and 301.9100-3 of the Regulations Taxpayer A may be granted a period not to exceed 60 days from the date of issuance of this ruling to make an election under section 1.408A-5 of the Income Tax Regulations (I.T. Regulations) to recharacterize Taxpayer A's Roth IRA as 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 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) 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 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) of the Internal Revenue Code (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.

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.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to elect to recharacterize the Roth IRA on or before the date prescribed by law, including extensions, for filing his Federal Income Tax Return for the year of contribution, was caused by his lack of awareness of the necessity of making an election, coupled with his reasonable reliance on Firm M and its representatives, who were tax professionals employed by Taxpayer A, and who failed to make, or advise the taxpayer to make and how to make, the election before the deadline for making the election.

Based on the above, Taxpayer A meets the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i) and (v), for the 2002 tax year. Therefore, Taxpayer A is granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize his calendar year 2002 rollover contribution to his Roth IRA as a contribution to a traditional IRA.

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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.

If you wish to inquire about this ruling, please contact  
(ID # - ) at ( ) - . 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