



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200905039

NOV -7 2008

Uniform Issue List: 9100.00-00

SE: T: EP: RA: T3

Legend:

Taxpayer A =

IRA X =

Roth IRA Y =

Company V =

Amount F =

State N =

Dear _____ :

This is in response to a letter dated April 7, 2008, in which your authorized representative requests 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, an 89 year-old widow, is temporarily residing at an assisted care facility in State N to be near her son and specialized hospitals pending surgery. Taxpayer A maintained IRA X, a traditional individual retirement arrangement as described in section 408 of the Internal Revenue Code, ("Code"), with Company V.

On the advice of Taxpayer A's attorney and accountant, in year _____, Taxpayer A converted IRA X to Roth IRA Y. The amount of the conversion was Amount F.

Taxpayer A's attorney and accountant expected Taxpayer A's modified adjusted gross income to be below the limit found in Code sections 408A(c)(3)(A) and 408A(c)(3)(C)(ii) for the tax year. In , Taxpayer A's accountant prepared and timely filed Taxpayer A's federal income tax return for calendar year showing a modified adjusted gross income of less than the limit found in Code sections 408A(c)(3)(A) and 408A(c)(3)(C)(ii). In February , after the statutory deadline for a recharacterization of Roth IRA Y as a traditional IRA had passed, Taxpayer A received an Internal Revenue Service (the "Service") notice proposing changes to her Form 1040 based on a Form 1099-B issued by Company V which had not been reported on her year federal income tax return. The addition of this income raised her modified adjusted gross income above the limit found in Code sections 408A(c)(3)(A) and 408A(c)(3)(C)(ii).

Upon inquiry by Taxpayer A's accountant, it was discovered that during , sales of mutual fund shares held by Taxpayer A's grantor trust at Company V were initially completed by Taxpayer A's grantor trust at Company V and then reversed, and then reinstated, as of the original transaction date. This resulted in a Form 1099-B being manually prepared and sent to Taxpayer A at her home address rather than the address where she was receiving medical treatment in State N. Because of the manual mailing, the Form 1099-B was not bundled with Taxpayer A's other 1099 Forms and was never delivered to Taxpayer A's accountant for preparation of her tax return.

The Service has not discovered the Taxpayer's error or sought to disqualify the Roth IRA conversion.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA Y as a traditional IRA.

With respect to your ruling requests, Code section 408A(6) and section 1.408A-5 of the federal Income Tax Regulations (the 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 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)(B) 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 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 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.

Taxpayer A's ruling request requires the Internal Revenue Service to determine whether she is eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Although Taxpayer A was ineligible to convert her IRA X to Roth IRA Y in , she was unaware of these facts until the year , and her lack of awareness was primarily based upon her reliance on the advice of her attorney and accountant. Upon realizing her mistake, Taxpayer A, in a timely manner, subsequently submitted this request for relief under section 301.9100 to the Service.

Under the set of circumstances described above, Taxpayer A satisfies the requirements of section 301.9100-3(b)(1) of the Regulations. Accordingly, we rule that, pursuant to clauses (i),(ii),(iii) and (v) of section 301.9100-3 of the Regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA Y as a traditional IRA

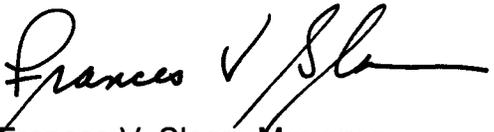
This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A at all relevant times.

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

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact
Please address all correspondence to
SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose