

200924062



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

MAR 16 2009

SETP: RA:TY

Legend:

Taxpayer A =

IRA X =

Roth IRA Y =

Roth IRA Z =

Institution B =

Firm M =

Amount A =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Dear

This is in response to your request dated February 3, 2006, as supplemented by correspondence dated November 9, 2007 and February 4, 2009, in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations (the "Regulations"). The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained IRA X with Institution B. In August of Year 1, Taxpayer A engaged Firm M to prepare his income tax returns and to provide tax planning advice. Based on Taxpayer A's projected gross income for Year 2, Firm M advised Taxpayer A of the opportunity to convert a portion of IRA X to a Roth IRA. Firm M did not advise Taxpayer A that the conversion was required to be made by December 31 of Year 2. In April of Year 3, Taxpayer A instructed Institution B to transfer Amount A from IRA X to Roth IRA Y. Taxpayer A did not receive a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc., from Institution B. In preparing Taxpayer A's Year 2 Federal income tax return, Firm M reported Amount A as a taxable distribution from IRA X.

Following the distribution of Amount A, Taxpayer A received a Year 3 Form 1099-R from Institution B showing Amount A as a taxable distribution. Although Taxpayer A provided the Year 3 Form 1099-R to Firm M, Firm M erroneously treated the transaction as a tax-free distribution and rollover. Firm M did not inform Taxpayer A that the transaction was taxable, that based on Taxpayer A's modified adjusted gross income for Year 3, Taxpayer A was ineligible to transfer Amount A to Roth IRA Y, and that Taxpayer A needed to make an election to recharacterize the contribution back to a traditional IRA by October 15 of Year 4. Taxpayer A became aware of the taxable nature of the transaction when he received a Notice of Deficiency from the Internal Revenue Service in Year 5.

In Year 6, Taxpayer A moved Roth IRA Y to Roth IRA Z, but has otherwise made neither withdrawals from nor further contributions to the Roth 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 (the "I.T. Regulations") to recharacterize Taxpayer A's Roth IRA as a traditional IRA.

Section 408A(d)(6) of the Internal Revenue Code (the "Code") 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 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 reasonable reliance on Firm M and its representatives, who were tax professionals employed by Taxpayer A, and who failed to make, or advise Taxpayer A 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, clause (v), for the Year 3. Further, granting relief will not prejudice the interests of the Government, because the granting of relief results in Taxpayer A having the same tax liability that would have resulted had the election to recharacterize been made on a timely basis. 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 Year 3 contribution of Amount A to Roth IRA Y as a contribution to 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.

Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

If you wish to inquire about this ruling, please contact ¹
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

cc: