



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

201226039

COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

APR 05 2012

UIL: 9999.98-00

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XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

T:EP:RA:T4

Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXX
- Taxpayer B = XXXXXXXXXXXXXXXXX
- Individual P = XXXXXXXXXXXXXXXXX
- Individual L = XXXXXXXXXXXXXXXXX
- Amount D = XXXXXXXXXXXXXXXXX
- Amount E = XXXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXXX
- IRA Y = XXXXXXXXXXXXXXXXX
- Roth IRA W = XXXXXXXXXXXXXXXXX
- Roth IRA Z = XXXXXXXXXXXXXXXXX

Financial Institution C= XXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXX:

This is in response to your request dated XXXXXXXX as supplemented by  
correspondence dated XXXXXXXX, and XXXXXXXX, in which your authorized

representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "P&A Regulations").

You submitted the following facts and representations in connection with your request.

Taxpayer A and Taxpayer B (the "Taxpayers") are husband and wife. Taxpayer A and Taxpayer B maintained IRA X and IRA Y respectively with Financial Institution C. Taxpayer A and Taxpayer B represent that in Year 2008 they were advised by their financial advisor, Individual P of Financial Institution C to rollover funds in their IRA X and IRA Y to Roth IRA W and Roth IRA Z.

Taxpayer A and Taxpayer B further represent that at the advice of their financial advisor Individual P, they rolled over their funds in IRA X and IRA Y in the amount of Amount D and Amount E into Roth IRA W and IRA Z in 2008.

Taxpayer A and Taxpayer B further represent that they were never told that this was a taxable event, nor they were advised of the extent of the tax obligation they would face. Taxpayer A and Taxpayer B state that if they had been informed that they would owe tax on the amount of the rollover, they would not have converted the funds.

Taxpayer A and Taxpayer B assert that they only became aware of the tax consequences of the conversion when they received a letter from the Service proposing an adjustment to their 2008 return.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A and Taxpayer B be permitted to elect to recharacterize Roth IRA W and Roth IRA Z as traditional IRAs.

With respect to your ruling request, Code section 408A(6) and section 1.408A-5 of the federal Income Tax Regulations (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 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) of the Code and section 1.408A-5 of the I.T. Regulations, 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, Q&A-6 of the I.T. Regulations describes how a taxpayer makes the election to recharacterize an 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)(B) of the Code 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 I.T. 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 of the I.T. Regulations 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 P&A 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 P&A Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 of the P&A 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 P&A 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 P&A 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 P&A 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 Taxpayers' ruling request requires the Internal Revenue Service to determine whether they are eligible for relief under the provisions of section 301.9100-3 of the P&A Regulations.

The Taxpayers were not aware of the fact that the rollover of funds from IRA X and IRA Y to Roth IRA W and Roth IRA Z were taxable events, and their lack of awareness was primarily based upon their reliance on the advice of their financial advisor, Individual P. Upon discovering the true nature of the transaction, the Taxpayers, in a timely manner, subsequently submitted this request for relief under section 301.9100-3 of the P&A Regulations to the Service.

Under the set of circumstances described above, the Taxpayers failed to make the election because they relied on the advice of a tax professional who failed to inform them of the necessity to make the election. Accordingly, we rule that, pursuant to clauses (iii) and (v) of section 301.9100-3 of the P&A Regulations, Taxpayers A and B are granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA W and Roth IRA Z as traditional IRAs.

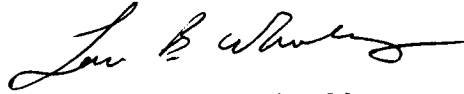
This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A at all relevant times.

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 your authorization on file in this office.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxx, at xxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of letter ruling
- Notice of Intention to Disclose

cc: xxxxxxxxxxxxxxxxxxxxxxxxxxxx