



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUL 03 2012

Uniform Issue List: 9100.00-00

T:EP:RA:TI

Legend:

Taxpayer A =

Taxpayer B =

IRA C =

Roth IRA D =

Financial Institution E =

IRA F =

Financial Institution G =

Roth IRA H =

Account I =

Account J =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Dear :

This letter is in response to a request for a letter ruling dated July 15, 2011, from your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("P&A Regulations").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A is married to Taxpayer B. Taxpayer A maintained IRA C, an individual retirement account ("IRA") under section 408(a) of the Internal Revenue Code (the "Code"), with Financial Institution E. Taxpayer A also maintained Roth IRA D, an IRA under section 408A of the Code, with Financial Institution E. Taxpayer B maintained IRA F, an individual retirement account under section 408(a) of the Code, with Financial Institution G. Taxpayer B also maintained Roth IRA H, an IRA under section 408A of the Code, with Financial Institution E.

On December 21, 2009, Taxpayer A transferred Amount 1 from IRA C to Roth IRA D. On December 31, 2009, Taxpayer B transferred Amount 2 from IRA F to Roth IRA H. At this time, Taxpayers A and B believed that they had successfully converted their traditional IRAs to Roth IRAs unaware they were ineligible to do so for the 2009 tax year because Taxpayers A and B had adjusted gross income ("AGI") of Amount 5. For this tax year, the AGI limit under section 408A(c)(3)(B) of the Code for converting a traditional IRA to a Roth IRA was \$100,000, with AGI as modified under section 408A(c)(3)(C). Since the modified AGI of Taxpayers A and B exceeded the limit for conversions during the 2009 tax year, the conversions were improper. The 2009 joint Form 1040 tax return for Taxpayers A and B was timely filed on October 15, 2010, with a valid extension. The 2009 tax year is not a closed year under the statute of limitations.

Taxpayers A and B also were not aware that a conversion to a Roth IRA could be recharacterized back to a traditional IRA by making an election to do so on or before the due date of the return (plus extensions) for the tax year in question. The tax preparer for Taxpayers A and B was not made aware of the conversions until October 18, 2010. Soon after the discovery of the improper conversions, the tax preparer informed Taxpayers A and B that their income (Amount 5) exceeded the limit for converting funds in traditional IRAs to Roth IRAs. The financial advisor for Taxpayers A and B contacted Financial Institution E and requested that Amounts 1 and 2 be transferred back to traditional IRAs. He was informed that this could not be done because the request was after the October 15, 2010 deadline for making this transfer (recharacterization). On December 22, 2010, Taxpayer A requested that Financial Institution E transfer the entire account balance in Roth IRA D (Amount 3) to a non-IRA investment account (Account I). On December 23, 2010, Taxpayer B also requested that Financial Institution E transfer the entire account balance in Roth IRA H (Amount 4) to a similar non-IRA investment account (Account J).

At the time the request for a private letter ruling was filed, the Internal Revenue Service (the "Service") had not discovered the need for Taxpayers A and B to recharacterize the Roth IRA conversions which were made in 2009.

Based on the foregoing facts and representations, you have requested that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayers A and B each be granted an additional period of time to recharacterize their failed Roth IRA conversions to traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the P&A Regulations, Code section 408A(d)(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 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 contributions.

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.

Code section 408A(c)(3) provided, with respect to the 2009 tax year, that an individual with modified AGI 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, in summary, that an individual with modified 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. Section 1.408A-4, Q&A-2, further provides, in summary, that an individual and his or her spouse must file a joint federal income tax return to convert a traditional IRA to a Roth IRA, and that the modified 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, 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, revenue ruling, revenue procedure, notice, or 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 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)) 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 the taxpayer's 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 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)(i) of the P&A Regulations provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been made timely.

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.

In Taxpayer A and B's request for a ruling dated July 15, 2011, the authorized representative states that it is the position of the Taxpayers that the grant of the extension requested will not prejudice the interests of the Government because it results in the Taxpayers having the same tax liability that would have resulted if the election to recharacterize Roth IRA D and Roth IRA H to traditional IRAs had been made timely.

In this case, the modified adjusted gross income of Taxpayers A and B exceeded the \$100,000 limit under section 408A(c)(3)(B) of the Code for tax year 2009. Thus Taxpayers A and B were ineligible to convert Amount 1 from traditional IRA C to Roth IRA D and Amount 2 from traditional IRA F to Roth IRA H in 2009.

Taxpayers A and B were unaware they were ineligible to convert traditional IRAs to Roth IRAs until their tax preparer informed them after October 18, 2010, that their income (Amount 5) exceeded the limit for converting funds in traditional IRAs to Roth IRAs. Upon being informed of this, Taxpayers A and B transferred Amount 3 from Roth IRA D and Amount 4 from Roth IRA H to non-IRA Account I and non-IRA Account J, respectively.

With respect to Taxpayers' request for relief, we conclude that, based on the information submitted and the representations contained herein, we cannot grant the relief that the Taxpayers requested. In this case, relief under sections 301.9100-1 and 301.9100-3 of the P&A Regulations is conditioned on Taxpayers A and B otherwise being able to elect to recharacterize their failed Roth IRA conversions in a manner that complies with the requirements of Code section 408A(d)(6) and section 1.408A-5 of the I.T. Regulations. This means that the amounts to be recharacterized must still be held by the Roth IRAs. However, Taxpayers A and B have transferred Amounts 3 and 4 from Roth IRA D and Roth IRA H, respectively, to non-IRA accounts. As a result, Taxpayers A and B cannot elect to recharacterize the failed conversion amounts, and the Taxpayers are not eligible for relief under sections 301.9100-1 and 301.9100-3 of the P&A Regulations. Therefore, Taxpayers A and B are not authorized to transfer Amount 3 in Account I and Amount 4 in Account J to 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 based on the assumption that all the traditional IRAs and Roth IRAs described above meet the requirements of Code sections 408 and 408A, respectively, at all relevant times.

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

**201239015**

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. # , , at ( ) .

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:  
Deleted Copy of this Letter  
Notice 437

cc: