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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201242018

MAY 24 2012

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

T:EP:RA:T3

Legend:

Firm A:

Firm F:

Taxpayer A:

Taxpayer B:

IRA X:

IRA XX:

Financial Institution C:

IRA Y:

IRA YY:

Roth IRA X:

Roth IRA Y:

Amount M:

Amount N:

Amount P:

Amount Q:

Amount R:

Dear :

This is in response to letters dated October 27, 2010, and November 7, 2011, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (P&A Regulations). You submitted the following facts and representations under penalties of perjury in connection with your request.

Taxpayers A and B are married and file a joint Federal income tax return annually. Taxpayer A maintained Individual Retirement Accounts (IRAs), IRA X and IRA XX, and Taxpayer B maintained IRA Y and IRA YY.

On February 25, 2008, Taxpayer A converted Amount M from IRA X to Roth IRA X and Amount N from IRA XX to Roth IRA X. Also on February 25, 2008, Taxpayer B converted Amount P from IRA Y to Roth IRA Y and Amount Q from IRA YY to Roth IRA Y.

In April of 2009, when Firm A was preparing Taxpayer A and B's 2008 joint Federal income tax return, Firm A informed Taxpayer A and B that their 2008 modified adjusted gross income (MAGI) exceeded $100,000 and that a conversion from traditional IRA to Roth IRA accounts was not allowed under section 408A of the Internal Revenue Code (Code). Firm A also discussed the rules for recharacterization of the funds back into the traditional IRAs.

Taxpayers A and B immediately agreed to the recharacterization. They informed Firm A, and their financial advisors, Firm F, of their intentions to recharacterize the funds in the Roth IRA accounts back to traditional IRA accounts. They informed Firm F that someone from Firm A would be contacting them to discuss the recharacterization. Firm A sent an email to Firm F explaining that the amounts converted from the traditional IRAs to the Roth IRAs needed to be reconverted back. Unfortunately, the assistant at Firm F was working from home on maternity leave and their email system did not forward the email to her. In addition, the email did not bounce back to Firm A and therefore, they were not aware that the email did not reach Firm F. Due to this miscommunication between the Firm F and Firm A, the reconversion was not made prior to the deadline.

Taxpayers A and B filed their calendar year 2008 Federal Income Tax Return on April 13, 2009. At that time they relied on the assumption that Firm A successfully passed along the instructions to recharacterize the funds, and Firm F properly and timely recharacterized the Roth IRA accounts back to traditional IRA accounts with Financial Institution C.

Firm A believed that the reconversion had been timely made. Amount R, the total of Amounts M, N, P and Q of distributions from the Taxpayers' traditional IRAs was reported as nontaxable. You have represented that the following footnote was attached to Taxpayer A and B's return as Statement 2 to the Form 1040:

> "During 2008 the taxpayer converted his traditional IRA valued at (Amount R) to a Roth IRA. In order to reverse the forbidden conversion, in accordance with IRC Sec. 408(a)(d)(6), the taxpayer set up a traditional IRA with the same trustee. He then instructed the trustee of the Roth IRA to make a trustee-to-trustee transfer of the conversion contribution made to the Roth IRA (including net income allocable to it since the date of the conversion) to the new traditional IRA before 10/15/09. He also notified the Trustee that he was electing to recharacterize the contribution to the Roth IRA and treat it as if it had been contributed to the new traditional IRA. Because of the recharacterization, the taxpayer and spouse have no taxable income to report from the conversion on their 2008 tax return. Because the entire amount was recharacterized, the taxpayer is not required to report the recharacterization on Form 8606."

Although the footnote refers to "his traditional IRA" the Amount R refers to the recharacterization of Roth IRA X and Roth IRA Y.

On July 19, 2010, Taxpayers A and B received a CP2000 notice. Taxpayers A and B forwarded it to Firm A to investigate and respond. The notice was requesting tax due on a number of IRA distributions. It was determined by Firm A that the IRS incorrectly added Amount R to income because at that time, Taxpayers A and B and Firm A believed that the IRA recharacterizations were properly and timely made. A letter was written to the IRS on July 26, 2010, to explain why the income was not taxable.

In response to the July 26, 2010 letter, an IRS representative instructed the tax preparers to fax to her page 5 from the CP2000 notice and a copy of the footnote that was attached to the originally filed tax return. On August 9, 2010, Firm A contacted the Taxpayer's contact at Financial Institution C to request copies of records reflecting the recharacterization on all accounts. On August 13, 2010, Firm A learned that the recharacterization was not made and immediately informed the taxpayers.

The Taxpayers received a closing notice from the IRS dated September 15, 2010 informing them that the Taxpayers were no longer liable for the tax deficiency reported to them on the July 19, 2010 tax notice as a result of the July 26, 2010 letter the IRS received.

It was unknown to the taxpayers until August 13, 2010 that Roth IRA X and Roth IRA Y were, in fact, still Roth accounts and the funds were never recharacterized back to the traditional IRAs as Firm F had been instructed.

The Service has not discovered the Taxpayer's failure to recharacterize or sought to disqualify the 2008 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 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 IRAs X and Y as traditional IRAs.

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

For years prior to 2010, section 408A(c)(3)(B) of the Code provides, in relevant part, 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 relating to years prior to 2010, provides that an individual with MAGI 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 income tax return to convert a traditional IRA to a Roth IRA, and that the MAGI subject to the $100,000 limit for a taxable year is the MAGI 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 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.

Taxpayers A and B 's 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.

Although Taxpayer A was ineligible to convert IRA X and IRA XX and Taxpayer B was ineligible to convert IRA Y and IRA YY they became aware of their ineligibility and the need to recharacterize in April 2009, and they took action to recharacterize the Roth IRAs prior to October 15, 2009. The Taxpayers informed Firm A and Firm F of their intention to recharacterize the Roth IRAs and they relied on Firm A and Firm F to complete the election. However, due to miscommunication between Firm A and Firm F, the elections to recharacterize the Roth IRAs were not completed.

Under the set of circumstances described above, Taxpayers A and B satisfy the requirements of clause (v) of section 301.9100-3(b)(1) of the P&A Regulations. Accordingly, we rule that Taxpayers A and B are granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA X and Roth IRA Y as a traditional IRAs.

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

This letter 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 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,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

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