

200352022



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 9100.00-00

SEP 30 2003

T:EP:RA:TI

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

Company L =

Company M =

Sum N =

Dear Mr. :

This is in response to a ruling request dated July 18, 2003, from your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations have been submitted:

Taxpayer A is married to Taxpayer B. During 2001, Taxpayer A converted a traditional individual retirement account (IRA X) maintained with Company L to a Roth IRA (IRA Y), also maintained with Company L. Taxpayer A was eligible to convert traditional IRA X to Roth IRA Y because the adjusted gross income of Taxpayer A and Taxpayer B (Taxpayer A's spouse) for calendar year 2001 did not exceed the limit in Section 408A(c)(3)(B) of the Internal Revenue Code ("Code"). Taxpayers A and B timely filed their 2001 joint federal tax return on April 11, 2002. Line 15b of their Form 1040 reported the conversion as a distribution of sum N from Taxpayer A's traditional IRA X. The conversion was also reported on Form 8606 for that year.

Some time after filing the 2001 tax return, Taxpayer A decided to recharacterize Roth IRA Y as a traditional IRA. Taxpayer was eligible to accomplish such recharacterization at any time before the date prescribed by law (including extensions) for filing the federal income tax return for the year of the contribution. Here, the relevant conversion was made for 2001, making the relevant tax return deadline October 15, 2002.

Before the October 15 deadline, Taxpayer A contacted his account representative at Company M, the broker-dealer for the Roth IRA Y, to discuss what actions were needed in order to recharacterize the Roth IRA. In response, the broker-dealer furnished Taxpayer A with the appropriate IRA recharacterization request form. In accordance with the form's instructions, Taxpayer A submitted a fully completed form to Company M during the morning hours of October 15, 2002. On that same day, Taxpayer A contacted Company M by telephone in order to confirm receipt of the form. Taxpayer was told that the form had been properly received on October 15, 2002, as evidenced by the date shown at the top of the form. It was thus Taxpayer A's understanding that the election was in order and that the recharacterization would be processed within the necessary time period. Taxpayer A contacted Company M again a day or two later to confirm that the necessary documentation had been timely received and was being processed. At that time, Taxpayer A was not made aware of any problems with the recharacterization request. Taxpayer A assumed the election was in order and the recharacterization was accomplished in accordance with applicable law. However, due to an administrative oversight, Taxpayer A's recharacterization request was not immediately transmitted between Company M and Company L. Because of this oversight, the transfer of IRA assets was not in fact completed on the records of Company L on October 15, 2002, in the manner required by section 1.408A-5 of the Income Tax Regulations. To date, Roth IRA Y remains in existence.

Calendar year 2001 is an "open year" with respect to Taxpayers A and B.

Based on the foregoing facts and representations, you have requested the following 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 ruling letter to recharacterize Roth IRA Y to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, Code section 408A(d)(6) and section 1.408A-5 of 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 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 and Answer-6, 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 301.9100-1, 301.9100-2, and 301.9100-3 of the Procedure and Administration 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 the Internal Revenue Service, 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 temporary 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 temporary 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.

Section 301.9100-3(c)(1)(iii) of the temporary regulations provides that a taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If, since the due date for making the election, specific facts have changed that make the election advantageous to the taxpayer, the Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Here Taxpayer A properly converted traditional IRA X into Roth IRA Y in 2001. In calendar year 2002, Taxpayer A decided to recharacterize Roth IRA Y. Taxpayer A was eligible to recharacterize Roth IRA Y as a traditional IRA until October 15, 2002, the deadline, including extensions, for filing the 2001 tax return. Taxpayer A timely submitted documents to Company M to have Roth IRA Y recharacterized as a traditional IRA. However, despite Taxpayer A's timely request, an administrative oversight in transmitting information between Company M and Company L prevented the recharacterization from being

completed on the records of Company L by October 15, 2002, as required by Regulation section 1.408A-5.

In accordance with Regulation section 301.9100-3(b)(1), we conclude that Taxpayer A acted reasonably and in good faith, since the inadvertent failure to complete the recharacterization was due to intervening events beyond Taxpayer A's control. Furthermore, we also conclude based on the relevant facts and representations that Taxpayer A is not using hindsight in requesting relief because Taxpayer A did in fact attempt to accomplish the recharacterization within the appropriate regulatory election period. Taxpayer A properly and fully completed all steps that were within Taxpayer A's power to recharacterize Roth IRA Y.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have been met, and that you have acted reasonably and in good faith with respect to making the election to recharacterize your Roth IRA Y as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clause (ii) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of 60 days from the date of the issuance of this letter ruling to so recharacterize.

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 IRA and X and Roth IRA Y meet the requirements Code sections 408 and 408A, respectively, at all relevant times.

Note: an amended calendar year Federal Form 1040 consistent with this ruling must be filed with the Service if it has not already been filed.

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

A copy of this ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

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Should you have any questions concerning this letter ruling, please contact
, SE:T:EP:RA:T1 , of my staff at

Sincerely yours,


Acting Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of the Ruling
Notice 437

cc: