



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200423030

MAR 9 2004

Uniform Issue List: 408.03-00

*T:EP:RA:TY*

Legend:

Taxpayer 1 =

Taxpayer 2 =

Company A =

IRA Sponsor P =

Amount R =

Amount S =

Amount T =

Amount X =

W IRS Office =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This letter is in response to a ruling request submitted by you dated \_\_\_\_\_, in which you request approval of the recharacterization of Individual Retirement Arrangement (IRA) accounts under section 408A(d)(6) of the Internal Revenue Code ("Code").

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

Taxpayer 1 and Taxpayer 2 (the Taxpayers) are a husband and wife who in \_\_\_\_\_ at the direction of their tax advisor with Company A, transferred their IRA accounts with IRA Sponsor P from traditional IRAs to Roth IRA accounts on Date 1. Taxpayer 1 transferred Amount R, and Taxpayer 2 transferred Amount S, for a total of Amount X. However, during \_\_\_\_\_ taxpayer 1 sold his interest in a partnership. As a result of the proceeds received from this sale, the Taxpayers' adjusted gross income for \_\_\_\_\_ exceeded the \$100,000 limitation imposed on IRA recharacterizations, thereby disqualifying the Taxpayers from undertaking such a recharacterization in \_\_\_\_\_. This was, however, erroneously overlooked by the Taxpayers' tax advisor, Company A.

In 1999, the Taxpayers switched tax advisors for the year and received conflicting advice as to whether they were eligible to rescind their IRA recharacterization to correct the matter. As a result, the Taxpayers missed rescinding their Roth IRA recharacterization by the prescribed December 31, \_\_\_\_\_ deadline. In \_\_\_\_\_ the Taxpayers switched back to their original tax advisor, Company A, and subsequently filed an amended joint \_\_\_\_\_ income tax return on Date 2 to reflect the improper recharacterization. Because of this amendment, the Taxpayers were subject to Amount T in penalties for \_\_\_\_\_

Later discussions with Internal Revenue Service (IRS) personnel led to the Taxpayers submitting a request to the W IRS Office to dismiss the penalties for 1998 because of the circumstances surrounding the matter. In a letter dated Date 3, the W IRS Office issued a letter to the Taxpayers dismissing the subject penalties for \_\_\_\_\_ because of reasonable cause: the incomplete advice they received from their tax advisor. This letter did not, however, specifically allow the Taxpayers to recharacterize their Roth IRA accounts back to traditional IRA accounts with IRA Sponsor P.

The Taxpayers subsequently requested that IRA Sponsor P recharacterize their Roth IRA accounts back to traditional IRAs. However, in a letter dated Date 4, IRS Sponsor P advised the Taxpayers that because their recharacterization request was dated after the prescribed December 31, \_\_\_\_\_ deadline, and the letter received from the W IRS Office did not specifically allow the recharacterization, they would have to request a private letter ruling from the IRS permitting the recharacterization.

Based on the above facts and representations, the Taxpayers have requested a ruling, pursuant to section 301.9100-3 of the Procedure and Administration Regulations (the regulations), that because of the circumstances surrounding this IRA recharacterization, specifically, the incomplete advice of their tax advisor, the IRS permit them to rescind and recharacterize their Roth IRA accounts back to traditional IRA accounts with IRA Sponsor P for the 1998 tax year because of the reasonable cause involved.

With respect to the Taxpayers' request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the Code 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) of the Code and section 1.408A-5 of the 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 the IRA contributions.

Section 1.408A-5 of the regulations, Question and Answer 6, describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that either has been contributed to a Roth IRA or 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), 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.

Section 1.408A-4 of the regulations, Q&A 2, provides, in summary, that an individual with modified adjusted gross income (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. Furthermore, Q&A 2(b) provides that in the case of a husband and wife who file a joint federal income tax return, the modified AGI is the modified AGI derived from the joint return using the couple's combined income.

Code section 408A(c)(3)(C)(ii), provides, in relevant part, that a married individual filing a joint federal income tax return may not contribute to a Roth IRA for a taxable year if his/her adjusted gross income for said year exceeds \$150,000.

Section 1.408A-5 of the regulations, Q&A 2(a), provides guidance with respect to the calculation of income attributable to recharacterized amounts. (See also section 1.408-4(c)(2)(ii) of the regulations.)

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Procedure and Administration Regulations (the regulations), in general, provide guidance concerning requests for relief submitted to the Internal Revenue Service on or after December 31, 1997. Section 301.9100-1(c) of the regulations 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 of the regulations generally provides guidance with respect to the granting of relief 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 Internal Revenue 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.

Announcement 99-57, 1999-24 I.R.B. 50 (June 14, 1999), provided that a taxpayer who timely filed his/her 1998 federal income tax return would have until October 15, 1999, to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Announcement 99-104, 1999-44 I.R.B. 555 (November 1, 1999), provided that a taxpayer who timely filed his/her 1998 federal income tax return would have until December 31, 1999, to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

The information presented by the Taxpayers demonstrates that they received erroneous and confusing information from their tax advisors in [redacted] and [redacted] which resulted in their missing the December 31, [redacted] Roth IRA recharacterization date provided by law. Since the Taxpayers timely filed a joint [redacted] federal income tax return, they would have been eligible for relief under either Announcement 99-57 or Announcement 99-104. However, because the Taxpayers missed the due dates set forth in the Announcements, it is necessary to determine if they are eligible for relief under the provisions of section 301.9100-3 of the regulations.

The Taxpayers were ineligible to convert their traditional IRAs to Roth IRAs since their adjusted gross income for the calendar year [redacted] exceeded \$100,000. However, at the time of the conversions, the Taxpayers believed their traditional IRAs had been properly converted to Roth IRAs because they had been so advised by Company A. Additionally, the Taxpayers ineligibility to convert their traditional IRAs and their failure to timely recharacterize their Roth IRAs were not discovered by the Service prior to their filing an amended federal income tax return for [redacted].

With respect to the Taxpayers' 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 the Taxpayers have acted reasonably, and in good faith with respect to making the election to recharacterize their Roth IRAs as traditional IRAs. Specifically, the Service has concluded that the Taxpayers have met the requirements of clauses (i) and (v) of section 301.9100-3(b)(1) of the regulations. However, the Service concludes as such only with respect to the Taxpayers' 1998 conversion of their traditional IRAs to Roth IRAs.

Therefore, the Service concludes with respect to the Taxpayers' ruling request that, pursuant to section 301.9100-3 of the regulations, the Service waives the normal Roth IRA recharacterization rules and, as a result, the Taxpayers are granted a period of 60 days from the issuance of this ruling letter to recharacterize their Roth IRAs as traditional IRAs.

Please note that in conjunction with recharacterizing Taxpayers' Roth IRAs, the Taxpayers must file an amended calendar year [redacted] federal income tax return consistent therewith, if they have not already done so. Furthermore, they must file any additional tax returns necessary to comply with this letter ruling (if any).

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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.

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

Sincerely yours,



Donzell Littlejohn  
Manager, Technical Group 4

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

cc: