



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUN 23 2004

Uniform Issue List: 9100.00-00

Legend:

Taxpayer A =
Company M =
Amount P =
IRA X =
Roth IRA Y =

Dear

This is in response to a ruling request dated December 29, 2003, as supplemented by additional correspondence dated May 10, 2004 and May 20, 2004, from your authorized representative, in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations have been submitted:

Taxpayer A maintained a traditional individual retirement account (IRA X) with Company M. On _____, he converted IRA X with a value of Amount P to a Roth IRA (IRA Y) maintained with Company M. At the time of the conversion, Taxpayer A was married and expected to have a modified adjusted gross income in _____ below the \$100,000 limit specified in section 408A(c)(3)(B) of the Internal Revenue Code ("Code") and to file a joint tax return with his spouse. During 2002, Taxpayer A and his wife separated. Taxpayer A's wife decided to file her _____ tax return as married filing separately necessitating Taxpayer A to also file married filing separately.

In _____, Taxpayer A engaged the services of a CPA firm to prepare his personal tax return for _____ (which had been properly extended to _____) on a married filing separately basis. Taxpayer A was informed that he was ineligible to convert IRA X to Roth IRA Y but misunderstood the instructions of the CPA firm that Roth IRA Y be recharacterized as a traditional IRA. Taxpayer A did not understand that further action was required on his part to undo the _____ IRA conversion.

In _____, when Taxpayer A's divorce was finalized, he was advised by his CPA firm that he should consider converting his traditional IRA to a Roth IRA. When he contacted Company M to effectuate a conversion he was informed that he had never recharacterized his _____ conversion. At that point Taxpayer A realized his mistake in not having recharacterized the _____ IRA conversion.

As of the date of this request, to the best of Taxpayer A's knowledge, the Internal Revenue Service ("Service") has not discovered Taxpayer A's failure to make the election to recharacterize Roth IRA Y to a traditional IRA.

Based on the foregoing facts and representations, you have requested the following ruling: that, pursuant to sections 301.9100-1 and 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 make an election under section 1.408A-5 of the federal Income Tax Regulations ("I.T. Regulations") to recharacterize Taxpayer A's 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 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, Question and Answer-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) provides, in relevant part, that a married individual filing a separate return 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 if an individual is married, he or she is permitted to convert an amount to a Roth IRA during a taxable year only if the individual and the individual's spouse file a joint tax return during that taxable year.

Section 301.9100-1, 301.9100-2, and 301.9100-3 of the 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, 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 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 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)(i) of the Regulations indicates that the interests of the government are prejudiced if granting relief will result in a taxpayer (or taxpayers, if more than one taxpayer is affected by the tax consequences of the election) having a lower tax liability in the aggregate for all years to which the election applies than the taxpayer (or taxpayers, if more than one is affected) would have had if the election had been made on a timely basis.

When a taxpayer is unable to meet the requirements of section 301.9100-2 of the Regulations for an automatic extension of time to make an election, as is the case here, section 301.9100-3 indicates that relief will be granted if the taxpayer provides evidence establishing that: the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

In this case, Taxpayer A was ineligible to convert his traditional IRA X to Roth IRA Y in 2001 since he was married and did not file a joint tax return for 2001. Taxpayer A's decision to file married filing separately was not made until after Taxpayer A "converted" IRA X to Roth IRA Y and was necessitated by Taxpayer A's spouse choosing in 2001 to file a separate return for 2001. Taxpayer A was unaware of the requirements of section 1.408A-5 of the I.T. Regulations. Taxpayer A filed this request for section 301.9100 relief after filing his 2001 Federal Income Tax Return. Finally, prior to Taxpayer A filing this request for relief under sections 301.9100-1 and 301.9100-3, the Service had not discovered Taxpayer A's ineligibility to convert IRA X to 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 as a traditional IRA. In addition, we believe that granting relief will not prejudice the interests of the government. Specifically, the Service has concluded that you have met the requirements of clause (i) of section 301.9100-3(b)(1) of the Regulations. Therefore, you are granted a period of 60 days from the date of the issuance of this letter ruling to recharacterize your Roth IRA as a traditional IRA.

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

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of the Ruling
Notice 437