



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

200502051

OCT 20 2004

UIL No.: 9100.00-00

SE: T: EP: RA: TI

Legend:

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

Dear:

This is in response to a ruling request dated June 8, 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 June 6, [REDACTED] 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 [REDACTED] below the \$100,000 limit specified in section 408A(c)(3)(B) of the Internal Revenue Code ("Code").

In [REDACTED] Taxpayer A proceeded to sell all the shares he held in his former employer's Employee Stock Purchase Plan.

200502051

In March [REDACTED], Taxpayer A engaged the services of a firm to prepare his personal tax return for [REDACTED]. Based on the financial information provided by Taxpayer A, Taxpayer A's [REDACTED] Federal Income Tax Return was filed on April 4, [REDACTED], with an adjusted gross income, minus Amount P, below the \$100,000 limit.

In April [REDACTED], Taxpayer A received a Notice from the Internal Revenue Service ("Service") requesting a reconciliation of the Forms 1099B filed with Taxpayer A's [REDACTED] tax return. Taxpayer A immediately contacted the firm that prepared his [REDACTED] tax return, and it was determined that Taxpayer A had provided the firm with only one of the two Forms 1099B received by Taxpayer A from his former employer. Such additional 1099B for Amount Q resulted in Taxpayer A's modified adjusted gross income for [REDACTED] exceeding the \$100,000 limit. Taxpayer A overlooked this additional Form 1099B because he was unaware that there were two reporting entities that were custodians of his former employer's Employee Stock Purchase Plan.

As of the date of this request, to the best of Taxpayer A's knowledge, the 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, 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) 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, Q&A-2, of the I.T. Regulations provides, in summary, that an individual with modified adjusted gross income 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 spouse must file a joint Federal Tax Return to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income 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 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.

In this case, Taxpayer A was ineligible to convert his traditional IRA X to Roth IRA Y in [REDACTED] since his modified adjusted gross income exceeded the \$100,000 limit specified in section 408A(c)(3)(B) of the Code. Taxpayer A filed this request for section 301.9100 relief after filing his [REDACTED] 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.

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Should you have any questions concerning this letter ruling, please contact

Sincerely yours,

(signed) Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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Notice 437