



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

2005 10034

U.I.L. 9100.00-00

DEC 14 2004

SE:T:EP:RA:T2

LEGEND:

- Taxpayer A = *****
- Taxpayer B = *****
- IRA X = *****
- IRA Y = *****
- Company M = *****
- Sum O = *****
- Sum N = *****
- Sum P = *****
- Bank B = *****
- IRA Z = *****

Dear *****:

This is in response to a letter dated October 20, 2004, as supplemented by correspondence dated December 13, 2004, submitted on your behalf by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations").

The following facts and representations have been submitted:

Taxpayer A is married to Taxpayer B. Taxpayer A maintained a Roth individual retirement arrangement (IRA), IRA X, and a traditional IRA, IRA Y, with Company M. On [REDACTED] Taxpayer A transferred Sum O from Roth IRA X and Sum N from traditional IRA Y at Company M to IRA Z, a Roth IRA he established with Bank B. Documentation submitted by Taxpayer A supports that on [REDACTED] Sum P (Sum O plus Sum N) was deposited into Roth IRA Z in a transaction described by Bank B as a "participant rollover". Taxpayer A asserts that he files a joint income tax return with his spouse, Taxpayer B, and that when he prepared his tax return for the [REDACTED] tax year he reported the above distributions as non-taxable rollovers. Taxpayer A and Taxpayer B state that they timely filed their [REDACTED] federal income tax return.

Taxpayer A asserts that he was unaware that he had inadvertently converted traditional IRA Y to a Roth IRA, IRA Z until he discovered the error in the spring of [REDACTED] in connection with the preparation of his tax returns for [REDACTED]. Taxpayer A asserts that his adjusted gross income for 2002 exceeded \$ [REDACTED] thus making him ineligible to convert a traditional IRA to a Roth IRA. Taxpayer A's was advised by his accountant to seek relief as described in section 301.9100-3 of the Regulations. Taxpayer A's request for relief under section 301.9100 of the Regulations was filed with the Service prior to the Service discovering that Taxpayer A was not eligible to convert traditional IRA Y to Roth IRA Z, and prior to the Service discovering that Taxpayer A had not timely elected to recharacterize Sum N back to a traditional IRA.

Based on the above facts and representations, you request a ruling that, pursuant to 301.9100-3 of the Regulations, Taxpayer A be granted a period not to exceed sixty days from the date of this ruling letter to recharacterize Sum N back to a traditional IRA.

With respect to your 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 Income Tax Regulations (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 returns 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 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, Question and Answer -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 a taxable year. Section 1.408A-4, Question and Answer -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 the taxable year is the modified adjusted gross income 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 provide guidance concerning requests for relief submitted to the 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 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 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 upon 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 transferred Amount O from Roth IRA X to Roth IRA Z which he was eligible to do under Code section 408A(c)(3). However, Taxpayer A also transferred Amount N from traditional IRA Y to Roth IRA Z which resulted in a conversion of a traditional IRA to a Roth IRA. Taxpayer A was not eligible to convert traditional IRA Y into Roth IRA Z since

Taxpayer A's and Taxpayer B's combined modified adjusted gross income for [REDACTED] exceeded \$100,000. Taxpayers A and B timely filed their joint [REDACTED] federal income tax return. Taxpayer A was unaware that traditional IRA Y had been converted to Roth IRA Z until the spring of [REDACTED] when he began to complete his tax return for [REDACTED]. Calendar year [REDACTED] is not a "closed" tax year. Therefore, it is necessary to determine whether Taxpayer A is eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Taxpayer A was ineligible to convert traditional IRA Y to Roth IRA Z. However, he was unaware of the conversion until [REDACTED]. Upon realizing traditional IRA Y had been converted to Roth IRA Z and learning that he was ineligible for the conversion, Taxpayer A requested an extension of time to recharacterize Sum N back to a traditional IRA. Taxpayer A filed his request for relief under section 301.9100 prior to the Service discovering that he was ineligible to convert traditional IRA Y to Roth IRA Z, and prior to the Service discovering that Taxpayer A had not timely elected to recharacterize Sum N back to a traditional IRA.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of the 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 Sum N, the amount transferred from traditional IRA Y to Roth IRA Z, as a traditional IRA. 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 an extension of 60 days from the date of the issuance of this letter ruling to so recharacterize.

This ruling assumes that the above IRAs qualify under section 408 and section 408A of the Code at all relevant times.

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 letter is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

If you have any questions regarding this ruling, please contact

*****SE:T:EP:RA:T2.

Sincerely,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2