



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUN 10 2005

Uniform Issue List 9100.00-00

T:EP:RA:T:3

Legend:

Taxpayer A = \*\*\*  
Taxpayer B = \*\*\*  
IRA C = \*\*\*  
Company D = \*\*\*  
Amount E = \*\*\*  
Roth IRA X = \*\*\*

Dear [REDACTED]

This is in response to a ruling request dated November 29, 2004, from your authorized representative, as supplemented by correspondence dated June 1, 2005 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 in support of your ruling request:

Taxpayer A maintained a traditional individual retirement account (IRA C) with Company D. On \*\*\*, 2003, he converted IRA C, with a value of Amount E, to Roth IRA X that is also maintained with Company D. Both IRA C and Roth IRA X hold the same 10 investment funds. Taxpayer A has provided the Internal Revenue Service with documentation that supports the transfer of Amount E to Roth IRA X.

At the time of the conversion, Taxpayer A was married to Taxpayer B. Taxpayer A filed his calendar year 2003 Federal income tax return (Federal Form 1040) jointly with Taxpayer B and reported the above transaction as a non-taxable distribution and rollover. Taxpayer A's 2003 Federal tax return shows an adjusted gross income in excess of \$100,000. Taxpayer A asserts that he was not made aware of the \$100,000 limit specified in *section 408A(c)(3)(B) of the Internal Revenue Code* ("Code") by the Certified Public Accountant ("CPA") firm that prepared his 2003 Federal income tax return. Although the CPA firm received Forms 1099-R showing the converted Amount E, it erroneously treated the transaction involving Amount E as a tax-free distribution and rollover, and did not inform Taxpayer A that transferring amounts from a traditional IRA to a Roth IRA gave rise to a taxable distribution from the traditional IRA. Additionally, the CPA firm did not advise Taxpayer A of the election required to recharacterize Roth IRA X back to a traditional IRA. Taxpayer A first became aware of the above limitation and the need to recharacterize Roth IRA X

back to a traditional IRA after hiring a new tax advisor in October 2004. Taxpayer A represents he has not deposited or withdrawn funds from Roth IRA X since the date of the 2003 transaction.

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 X 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 Income Tax 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 Code 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, O&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 IRA C to Roth IRA X, since the modified adjusted gross income on his 2003 joint Federal income tax return exceeded the \$ 100,000 limit specified in section 408A(c)(3)(B) of the Code. Taxpayer A asserts he was not made aware of this limitation by the CPA firm that assisted him in preparing his 2003 Federal Form 1040. Taxpayer A filed this request for section 301.9100 relief after filing his 2003 Federal income tax return. Taxpayer A reasonably relied upon a qualified tax professional (CPA firm) that prepared his 2003 return to alert him to the regulatory election at issue. The CPA firm neither made nor advised Taxpayer A to make the election to recharacterize his Roth IRA X 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 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 X as a traditional IRA. In addition, we believe that granting relief will not prejudice the interests of the Government. Specifically, we conclude that you have met the requirements of clause (v) 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 X 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 C and Roth IRA X either meet or have met the requirements in 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 \*\*\* at either \*\*\* or \*\*\*.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of this letter
- Notice of Intention to Disclose, Notice 437