



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

200611036

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIC: 9100.00-00

DEC 22 2005

SE: T. EP: RA: T3

LEGEND:

Taxpayer A:

Taxpayer B:

Financial Advisor C:

Financial Advisor D:

Tax Advisor E:

Company M:

Sum 1:

Dear [REDACTED]:

This is in response to the [REDACTED], request for relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations ("Regulations"), submitted on your behalf by your authorized representative, as supplemented by correspondence dated [REDACTED], [REDACTED], and [REDACTED]. The following facts and representations support your request for relief.

Taxpayer A is married to Taxpayer B. Taxpayers A and B filed joint Federal Tax Returns (Forms 1040) for tax years [REDACTED] through [REDACTED].

During April, [REDACTED], Taxpayer A met with Financial Advisor C associated with Company M to review his retirement status. Since Taxpayer A was scheduled to deploy into a military combat zone, he and Financial Advisor C believed that his calendar year [REDACTED] Federal adjusted gross income would not exceed \$100,000. As a result, Financial Advisor C advised Taxpayer A to convert his traditional individual retirement account ("Traditional IRA") into a Roth IRA. Taxpayer A did so. Taxpayer A asserts that Financial Advisor C advised him that, if necessary, he could "roll back" his Roth IRA account into a Traditional IRA "at any time".

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An affidavit signed by Financial Advisor C and submitted with Taxpayer A's request for relief reads in pertinent part:

"The Affiant recognizes it is possible Taxpayer A misunderstood his instructions and/or advise (sic) and could have thought the over funded IRA could be recharacterized at any time".

The amount converted to Taxpayer A's Roth IRA totaled Sum 1.

Taxpayer A did not deploy into a combat zone; as a result, his calendar year [REDACTED] Federal adjusted gross income exceeded \$100,000, and he was ineligible to convert his Traditional IRA into a Roth IRA.

During calendar year [REDACTED] Taxpayer A was assessed Federal income and excise taxes by the Internal Revenue Service relating to his purported 2001 IRA recharacterization. In response thereto, during the latter part of 2004, Taxpayer A contacted Financial Advisor D of Company M and advised him that he wished to recharacterize the Roth IRA funded during [REDACTED] back to a Traditional IRA. An affidavit signed by Financial Advisor D and submitted with this request for relief provides in pertinent part:

"Affiant did not know if the requested recharacterization was permissible- he completed the "paper work" and referred the request to a tax compliance employee with the home office of Company M".

The tax compliance officer at the Company M home office advised Taxpayer A that his request to recharacterize his Roth IRA was not timely and that Financial Advisor D could not process Taxpayer A's request. Company M's tax compliance officer also advised Taxpayer A to seek professional tax advice.

Shortly thereafter, Taxpayer A engaged the services of Tax Advisor E who took the steps necessary to insure that Taxpayers A and B's Federal tax returns for years [REDACTED] through [REDACTED] were properly filed and that all Federal income and excise taxes due were paid. Tax Advisor E also filed this request for relief on behalf of Taxpayers A and B.

Taxpayer A and Taxpayer B filed joint Federal income tax returns for tax years [REDACTED] through [REDACTED]. Their [REDACTED] Federal Form 1040 reflects an IRA distribution totaling Sum 1.

With respect to Taxpayers A and B, tax year [REDACTED] is not barred by the statute of limitations.

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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 Taxpayers A and B may make an election under section 1.408A-5 of the Income Tax Regulations (I.T. Regulations) to recharacterize Taxpayer A's Roth IRA created during tax year [REDACTED] as a traditional IRA as long as said election to recharacterize is made no later than 60 days from the date of issuance of this ruling letter.

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 contributions, 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 408(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 contribution.

Section 1.408A-5, Question and Answer-6(a) of the I.T. Regulations, describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount to be converted: (1) the taxpayer must notify the trustee for the first IRA and the trustee to the second IRA, that the taxpayer has elected to treat the contribution as having been made to the second IRA, instead of the first IRA, (2) the amount and year of the contribution to the first IRA that is to be recharacterized (and if the transferee trustee is different from the transferor trustee with specific information that is sufficient to effect the recharacterization), and (3) the trustee must make the transfer.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Procedure and Administration Regulations, in general, 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 making of a 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(a) of the Regulations provides the application 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)) 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 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.

Taxpayer A asserts that when he converted his Traditional IRA to a Roth IRA during 2001, he was advised by Financial Advisor C that he could recharacterize the Roth IRA to a Traditional IRA at any time. Financial Advisor C's affidavit concedes that Taxpayer A could have understood that his advice supported this conclusion. Furthermore, during 2004, Taxpayer A, acting in a manner consistent with the information purportedly provided him by Financial Advisor C, did attempt to recharacterize his Roth IRA as a Traditional IRA by contacting Financial Advisor D. As noted above, Financial Advisor D was unaware as to whether Taxpayer A's request was timely. Eventually, both Taxpayer A and Financial Advisor D discovered that the period of time within which Taxpayer A could have recharacterized his Roth IRA as a Traditional IRA had expired.

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Based on the above, we believe that Taxpayer A and Taxpayer B met the requirements of clause (v) of section 301.9100-3(b)(1) of the Regulations for the [REDACTED] tax year. Therefore, Taxpayer A and Taxpayer B are granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize Taxpayer A's calendar year [REDACTED] contribution to his Roth IRA as a contribution to a Traditional IRA. Said recharacterized amount cannot exceed Sum 1.

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

A copy of this letter ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions please contact [REDACTED], Esquire,
(I.D. # - [REDACTED]), at (202) - [REDACTED]

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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Notice of Intention to Disclose, Notice 437