



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 26 2007

200729037

Uniform List Number 9100.00-00

SE:T:EP:RA:T:2

LEGEND

Taxpayer A =

Taxpayer B =

IRA P =

IRA Q =

Roth IRA X =

Roth IRA Y =

Company M =

Amount N =

Amount O =

Amount R =

Amount S =

Individual C =

Amount U =

Dear :

This is in response to a letter dated November 10, 2006, submitted on your behalf by your authorized representative in which your request relief under section 301.9100-3 of the Procedure and Administration Regulations ("Regulations"). Your request was supplemented by information received on April 23, 2007

The following facts and representations have been submitted on your behalf:

Taxpayer A maintained a traditional individual retirement arrangement, IRA P at Company M. IRA P is an IRA as described in section 408(a) of the Internal Revenue Code ("Code"). A portion of the funds in IRA P were rolled over from a Code section 401(k) plan. On December 30, 2005, Taxpayer A converted Amount N to Roth IRA X also maintained at Company M. That same day, Taxpayer A converted Amount O from IRA P to Roth IRA X, which resulted in a total of Amount R being converted from traditional IRA P to Roth IRA X.

Taxpayer B, who is married to Taxpayer A, maintained a traditional IRA, IRA Q, with Company M. IRA Q is an IRA as described in Code section 408(a). On December 30, 2005, Taxpayer B converted Amount S to Roth IRA Y. It is represented that at the time of the conversion, Taxpayer A and Taxpayer B believed that their modified adjusted gross income would be below \$100,000, since neither were employed for most of 2005 and they would therefore qualify for the conversion under section 408A of the Code.

Taxpayers A and B filed an extension of time to file their 2005 Federal individual income tax return, Form 1040, until October 16, 2006 because they had not received Schedule K-1s from investments. It is represented that Taxpayer A and Taxpayer B received their Schedule K-1s on October 11, 2006, which they then gave to their accountant, Individual C. It is further represented that the income from the Schedule K-1s caused Taxpayer A and Taxpayer B's modified adjusted gross income for the 2005 tax year to be in excess of \$100,000 and therefore making them ineligible to convert their traditional IRAs to Roth IRAs.

It is represented that Taxpayer A and Taxpayer B and Individual C discussed in December 2005 and again in April 2006 the requirement that the Roth IRA conversions be recharacterized if the income on the Schedule K-1s should be greater than approximately Amount U. It is represented that Individual C advised Taxpayer A and Taxpayer B that they could recharacterize the Roth IRAs or wait until they had received their Schedule K-1s to verify whether the income on the Schedule K-1s exceeded Amount U. Taxpayer A and Taxpayer B informed Individual C that they would recharacterize the Roth IRAs back to traditional IRAs.

Taxpayer A and Taxpayer B state that on October 12, 2006, Individual C attempted to contact them after inputting their information from the Schedule K-1s. Taxpayer A and Taxpayer B also allege that on October 13, 2006, Individual C contacted Taxpayer A who, had been released from the hospital the day before and was heavily medicated, informed Individual C that he thought that Individual C had all the information he needed to file their tax returns without having an annual pre-filing meeting. It is represented that neither party discussed the Roth IRA recharacterizations or the impending deadline. As a result, Individual C believed that Taxpayers A and B had recharacterized the Roth IRAs and thus he completed their Form 1040 as if both Roth IRAs had been recharacterized. Taxpayer A and Taxpayer B's Form 1040 was filed electronically on October 13, 2006.

Taxpayer A states that on October 18, 2006, he spoke with Individual C who asked Taxpayer A when had he recharacterized the Roth IRAs. Taxpayer A states that he told Individual C that he had not recharacterized the Roth IRAs back to traditional IRAs because he believed that the deadline for doing so was December 31, 2006. Taxpayer A states that at this time, Individual C informed him that the deadline for recharacterizing the Roth IRAs back to traditional IRAs had passed. Taxpayer A further states that he immediately called his broker to recharacterize the Roth IRAs back to traditional IRAs but was also informed that the deadline had passed and thus he was unable to recharacterize the Roth IRAs.

Taxpayer A and Taxpayer B's request for relief under section 301.9100 of the Regulations was filed shortly after discovering that they had missed the deadline to recharacterize Roth IRAs X and Y back to traditional IRAs and prior to the Service discovering that Taxpayer A and Taxpayer B had not timely elected to recharacterize Roth IRAs X and Y to traditional IRAs.

Based on the above facts and representations, Taxpayer A and Taxpayer B request a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayer A and Taxpayer B be granted a period of 60 days from the date of this ruling letter to recharacterized Taxpayer A's Roth IRA X and Taxpayer B's Roth IRA Y to traditional IRAs.

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 to 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 interest 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, the Taxpayer A and Taxpayer B maintained traditional IRA P and traditional IRA Q, respectively, at Company M, which they converted to Roth IRAs X and Y, respectively, on December 30, 2005. At the time of conversion, Taxpayer A and Taxpayer B believed their modified adjusted gross income would be less than \$100,000. However, Taxpayer A and Taxpayer B's modified adjusted gross income for the 2005 tax year exceeded \$100,000, thus making them ineligible to convert their traditional IRAs to Roth IRAs.

Taxpayer A and Taxpayer B timely filed their joint 2005 Federal income tax return, with extension, by Individual C who believed that Taxpayer A and Taxpayer B had recharacterized their Roth IRAs back to traditional IRAs. Within a few days after filing their 2005 tax return, Taxpayer A informed Individual C that the recharacterizations had

not been done. Due to his illness, Taxpayer A was unable to communicate this fact to Individual C when they spoke on October 13, 2006, the day the 2005 tax return was filed. Therefore, it is necessary to determine whether Taxpayer A and Taxpayer B are eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Taxpayer A and Taxpayer B were ineligible to convert their traditional IRAs P and Q, respectively, to Roth IRAs X and Y, respectively. Due to Taxpayer A's illness, he and Taxpayer B were unable to have their annual pre-filing meeting with Individual C at which the 2005 tax return would have been discussed. Taxpayer A realized five days

after the 2005 tax return was filed that the deadline for recharacterizing the Roth IRAs had passed and upon realizing such, he and Taxpayer B requested relief from the Service before the Service discovered that they were ineligible to convert their traditional IRAs to Roth IRAs. The 2005 taxable year is not closed under the statute of limitations.

Therefore, based on the information submitted and the representations contained therein, the requirements of sections 301.9100-1 and 301-9100-3 of the Regulations have been met, and that Taxpayer A and Taxpayer B have acted reasonably and in good faith with respect to making the election to recharacterize Roth IRA X and Roth IRA Y, respectively, back to traditional IRAs. 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, pursuant to section 301.9100-3 of the Regulations, Taxpayer A and Taxpayer B are granted an extension of 60 days from the date of this letter to so recharacterize Roth IRA X and Roth IRA Y, respectively, back to traditional IRAs.

This ruling assumes that the above IRAs qualify under section 408 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

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose Form 437