



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200850052

SEP 10 2008

Uniform Issue List Number: 9100.00-00

Legend:

- Taxpayer A = *****

- Taxpayer B = *****

- Custodian C = *****
- IRA X = *****
- IRA Y = *****
- Amount 1 = *****
- Amount 2 = *****
- Amount 3 = *****

Dear *****:

This is in response to a letter dated ***** , submitted by your authorized representative on your behalf, as supplemented by correspondence dated **** **, **** **, ***** **, and August **, **** , in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("regulations").

In support of your request for relief you have submitted the following facts and representations:

Taxpayers A and B ("Taxpayers") are spouses and filed a joint federal income tax return for calendar year **** . The time for filing the return was extended to October **, **** .

During **** , Taxpayer A converted Amount 1 from IRA X, a traditional "individual retirement arrangement," to IRA Y, a Roth IRA. Taxpayer A maintained both IRA X and IRA Y with Custodian C.

In September ****, the Taxpayers were informed by their authorized representative that Amount 2 (their **** modified adjusted gross income ("AGI")) exceeded the amount for a taxable year during which a taxpayer may convert funds from a traditional IRA to a Roth IRA. As directed by his authorized representative, Taxpayer A then contacted Custodian C requesting that IRA Y be recharacterized as a traditional IRA. Taxpayer A represents that he received, completed and mailed a form provided by Custodian C confirming his request for recharacterization of Roth IRA Y¹ as a traditional IRA. Both Taxpayer A and his tax preparer understood and believed that the recharacterization of Roth IRA Y as a traditional IRA for **** was effective as of ***** **, ****. Therefore, the attempted recharacterization of Roth IRA Y would have been within the time allowed by statute for recharacterizing an amount that previously had been converted from a traditional IRA to a Roth IRA.² Also, because Taxpayer A and the tax preparer believed they had completed a valid recharacterization, Amount 1, as reported to the IRS by Custodian C as a taxable IRA distribution on a **** Form 1099-R ("Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc."), was not included in the Taxpayers' income when they filed their **** federal income tax return. Instead, the tax preparer appended a statement to the Taxpayers' return, mistakenly disclosing that Roth IRA Y had been recharacterized. The amount then included in income on line 15b of the Taxpayers' **** Form 1040 was \$0.

In December ****, Taxpayer A noted that his November statement from Custodian C appeared to be in error because it showed Roth IRA Y still retaining all its assets, rather than having been transferred to a traditional IRA. Taxpayer A contacted Custodian C about this matter and was informed that Custodian C had not received his recharacterization request. Also, Custodian C now denied Taxpayer A's request for recharacterization because it was after the deadline for completion of such transactions established under sections 408A(d)(6) of the Internal Revenue Code ("Code") and 1.408A-5 of the Income Tax Regulations ("I.T. Regs."). Custodian C informed Taxpayer A that Roth IRA Y would not be recharacterized without a ruling from the Internal Revenue Service ("Service").

As previously stated, Taxpayer A received a Form 1099-R from Custodian C for ****, reporting Amount 1 as a taxable distribution. Custodian C also issued a Form 5498 ("IRA Contribution Information") to Taxpayer A for **** reporting a contribution of Amount 1 to Roth IRA Y. However, since Custodian C did not then transfer the assets of Roth IRA Y into a traditional IRA, it has not issued a subsequent Form 1099-R or Form 5498 showing that Roth IRA Y has been recharacterized.³ Had Custodian C

¹ i.e., Amount 1 plus earnings accrued between the time of conversion of Amount 1 in IRA X into IRA Y and the time of the attempted recharacterization of IRA Y as a traditional IRA.

² Taxpayer A represents that he successfully recharacterized a Roth IRA as a traditional IRA for **** (which was also maintained with Custodian C) using the same procedures he followed for ****, but without success.

³ Documents submitted by Taxpayer A's authorized representative indicate that he made an estimated tax payment of Amount 3 on ***** **, ****, for the original **** conversion of traditional IRA X to Roth IRA Y. However, the IRS credited Amount 3 as a payment for Taxpayer A's taxes, rather than for . By check dated ***** **, ****, the IRS refunded Amount 3 to Taxpayer A.

transferred the assets in Roth IRA Y to a traditional IRA, it would have reissued Form 1099-R and Form 5498 to reflect the recharacterization of Roth IRA Y as a traditional IRA. Because Custodian C did not reissue either Form 1099-R or Form 5498, the forms that the Service has received are inconsistent with the Taxpayers' statement in their **** tax return claiming that recharacterization had occurred on ***** **, ****. Moreover, the Forms 1099-R and 5498 on file with the Service continue to show a taxable event of Amount 1 that was not included in the Taxpayers' **** income, a discrepancy which could have triggered an audit adjustment or at least an inquiry from the Service. Taxpayer A's ***** *, **** request for relief under section 301.9100-3(b)(1)(i) of the regulations was submitted to the Service prior to the Service discovering that Taxpayer A had failed to make a timely recharacterization of Roth IRA Y as a traditional IRA.

Based on the facts and representations provided above, Taxpayer A requests a ruling that, pursuant to section 301.9100-3 of the regulations, he be granted a period not to exceed 6 months from the date of issuance of this ruling letter to complete an election under section 1.408A-5 of the I.T. Regs. to recharacterize his Roth IRA Y as 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 I.T. Regs. 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 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, Question and Answer -6 of the I.T. Regs. describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that either has been contributed to a Roth IRA or 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 specific 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 modified AGI 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. Regs. provides, in summary, that an individual with modified AGI in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Furthermore, Q&A-2(b) provides that in the case of a husband and wife who file a joint Federal Income Tax Return, the modified AGI is the modified AGI derived from the joint return using the couple's combined income.

Section 1.408A-5, Q&A-2(a) of the I. T. Regs. provides guidance with respect to the calculation of income attributable to recharacterized amounts.

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) of the regulations provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, revenue ruling, revenue procedure, 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 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 if: (i) the taxpayer's request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) 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 **** because the Taxpayers' modified AGI exceeded the \$100,000 limit specified in section 408A(c)(3)(B) of the Code. Taxpayer A attempted, but failed to recharacterize Roth IRA Y within the time provided by the Code and the I. T. Regs. It was only in December of ****, after the deadline of *****, **** had passed, that Taxpayer A became aware that Custodian C had not yet transferred the assets in Roth IRA Y to a traditional IRA. However, with the understanding that a successful conversion took place in **** of Amount 1 in traditional IRA X to Roth IRA Y, on *****, ****, Taxpayer A made a payment of Amount 3 to the IRS, which amount was not refunded to him until November of ****. Taxpayer A filed this request for a private letter ruling seeking additional time to complete the recharacterization of Roth IRA Y as a traditional IRA before the failure to make a timely election was discovered by the Service. The **** calendar year is not a closed tax year.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, you have met the requirements of sections 301.9100-1 and 301.9100-3 of the regulations, and that you have acted reasonably and in good faith with respect to making the election to recharacterize your failed conversion 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 a period of 60 days from the date of the issuance of this letter ruling to recharacterize Amount 1, plus earnings thereon, of Roth IRA Y 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 traditional IRA X and Roth IRA Y meet the requirements of Code sections 408 and 408A, 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.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have

any questions pertaining to the ruling, please contact *****
***** SE:T:EP:RA:T1 ***** for further
information.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1