200950059

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 15 2009

Uniform Issue List: 9100.00-00

SE:T:EP:RA:T1

Legend:

Taxpayer A	=
Taxpayer B	=
401(k) Account C	=
Financial Institution D	=
Financial Institution E	=
Date F	=
Date G	=
IRA X	=
Roth IRA Y	=
Amount 1	=
Amount 2	=

Dear

This is in response to a letter dated November 13, 2008, from your authorized representative, as supplemented by correspondence dated April 20 and May 28, 2009, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). The following facts and representations support your ruling request.

Taxpayer A and Taxpayer B (collectively "Taxpayers") are married. Taxpayer A maintained 401(k) Account C with Financial Institution D. On Date F, upon the advice of her financial advisor at Financial Institution D, Taxpayer A caused Amount 1, the entire balance of 401(k) Account C, to be transferred to a traditional IRA (IRA X), a qualified individual retirement arrangement established and maintained at Financial Institution E under the rules of section 408 of the Internal Revenue Code (the "Code"). On Date G, upon the advice of her financial advisor at Financial Institution D, Taxpayer A caused IRA X, which at this time had a balance of Amount 2, to be converted to a Roth IRA Account, Roth IRA Y.

Upon advising Taxpayer A to convert IRA X into Roth IRA Y, the financial advisor advised Taxpayer A of the income limitations found in section 408A(c)(3)(B) of the Code. At the time of the conversion, the Taxpayers believed that their modified adjusted gross income ("AGI") for the 200 tax year would be below $100,000 and Taxpayer A believed she was eligible to make the conversion described above under section 408A of the Code.

However, because Taxpayer B was part-owner of numerous pass-through entities during the 20C tax year, the Taxpayers were not able to ascertain their modified AGI for the 20C tax year until the issuance of numerous Schedule K-1's from the various entities. Upon receipt of all Schedule K-1's, it became apparent that the Taxpayers' modified AGI for 200 exceeded the $100,000 limit found at section 408A(c)(3)(B) of the Code for purposes of determining the Taxpayers' eligibility to make a Roth conversion for 20C and thus caused Taxpayer A to be ineligible to convert IRA X into Roth IRA Y.

The Taxpayers requested and were granted an extension for filing jointly their 200 federal income tax return until October 15, 200 . However, because certain Schedule K-1's were not issued until after that deadline, the Taxpayers were not able to file their 200 tax return by the deadline. As a result, when the Taxpayers discovered that the rollover of IRA X into Roth IRA Y was not permitted, the time for electing to recharacterize Taxpayer A's Roth IRA into a traditional IRA had already expired.

The Taxpayers had no control over the issuance of the Schedule K-1's and had no way of knowing what they would show until they were issued. Prior to being contacted by Taxpayer A, the Internal Revenue Service (the "Service") had not discovered Taxpayer A's failure to recharacterize.

As of the date of this ruling request, Taxpayer A had not recharacterized her Roth IRA, IRA Y, to a traditional IRA.

Based on the above, you, through your authorized representative, request the following letter ruling: that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period of 60 days from the date of this letter ruling to recharacterize the failed Roth IRA conversion 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 federal 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 return for the year of contributions.

Section 1.408A-5, Q&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 modified 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 income 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 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 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 Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, revenue ruling, revenue procedure, notice, or 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 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 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)) 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 the taxpayer's request for section 301.9100-3 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer 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 IRA X into Roth IRA Y since her modified adjusted gross income exceeded the $100,000 limitation in Code section 408A(c)(3)(B). However, until she discovered otherwise, she believed she was eligible to convert IRA X into Roth IRA Y. Taxpayer A filed this request for section 301.9100 relief after discovering that she was ineligible to convert IRA X into Roth IRA Y. Calendar year 200 is not a "closed" tax year. In addition, Taxpayers have not filed their 200 federal income tax return, so the statute of limitations for that year has not begun running.

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 you have acted reasonably and in good faith with respect to making the election to recharacterize your Roth IRA as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clauses (i) and (ii) 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 so recharacterize. This ruling only applies to amounts converted from traditional IRA X to Roth IRA Y and not any regular contributions to the Roth IRA.

This ruling is conditioned upon the Taxpayers filing their 200 federal income tax return pursuant to the provisions of Section 1.408A-4, Q&A-2(b) of the I. T. Regulations.

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 X and Roth IRA Y meet the requirements of Code sections 408 and 408A, respectively, at all relevant times.

This letter is directed only to the taxpayer who 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 letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact (Government Identification Number XX-XXXXX) by phone at (XXX) XXX-XXXX or by fax at (XXX) XXX-XXXX. Please address all correspondence to

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of letter ruling
- ▶ Notice of Intention to Disclose

Cc: