



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201114046

JAN 12 2011

T:EP:RA:T3

Uniform Issue List: 9100.00-00

Legend:

Taxpayer A:

Country S:

CPA J:

Year 1:

Year 3:

Amount M:

IRA X:

Roth IRA Y:

Company B:

Dear :

This is in response to a letters dated June 25, 2010, July 22, 2010, November 10, 2010, and November 30, 2010, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). You submitted the following facts and representations in connection with your request.

Taxpayer A works overseas and resides in Country S. Taxpayer A files Form 1040 as a United States citizen and maintained a traditional individual retirement account under section 408 of the Internal Revenue Code with Company B ("IRA X").

Taxpayer A has been a client of CPA J for over 13 years and has relied upon him for her tax preparation and tax planning. In Year 1 Taxpayer A consulted CPA J regarding converting IRA X to a Roth IRA.

CPA J examined Taxpayer A's previous tax returns and advised Taxpayer A that for Year 1 her gross income would be under the modified adjusted gross income limit of section 408A(c)(3)(B) of the Internal Revenue Code for purposes of converting her traditional IRA, IRA X, to a Roth IRA.

In Year 1, Taxpayer A, relying upon the advice of CPA J, transferred Amount M from IRA X to a Roth IRA, Roth IRA Y, and assumed that she had successfully converted her traditional IRA X to a Roth IRA.

However, CPA J did not advise Taxpayer A that prior to the conversion of IRA X, her modified adjusted gross income for conversion purposes included Taxpayer A's foreign earned income which was usually deducted in computing adjusted gross income for Form 1040 purposes, and as a result, Taxpayer A's modified adjusted gross income for Year 1 exceeded the limit of Code section 408(A)(c)(3)(B). Taxpayer A did not discover this error and that her conversion of IRA X was a failed conversion until after the expiration of the time limit for recharacterizing her failed Roth IRA conversion as a traditional IRA.

The Service has not discovered Taxpayer A's error or sought to disqualify the Year 1 Roth IRA conversion.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA Y as a traditional IRA.

With respect to your ruling request, Code section 408A(6) and section 1.408A-5 of the federal Income Tax Regulations (the 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 originally 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 & Answer-6 of the 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)(B) provides that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) 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 Regulations provides 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 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 (AGI) 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 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.

Taxpayer A's ruling request requires the Internal Revenue Service to determine whether she is eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Although Taxpayer A was ineligible to convert her IRA X to Roth IRA Y in Year 1, Taxpayer A was unaware of these facts until the Year 3, and her lack of awareness was primarily based upon her reliance on the advice of her CPA, CPA J. Upon realizing her mistake, Taxpayer A, in a timely manner, subsequently submitted this request for relief under section 301.9100 to the Service.

Under the set of circumstances described above, Taxpayer A satisfies the requirements of section 301.9100-3(b)(1) of the Regulations. Accordingly, we rule that, pursuant to clauses (i),(iii) and (v) of section 301.9100-3 of the Regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA Y as a traditional IRA.

This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A at all relevant times.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

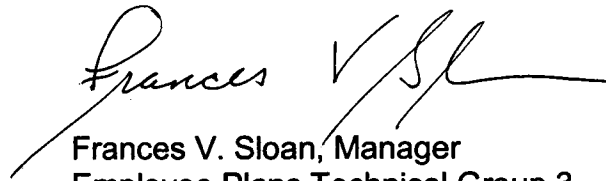
A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

**201114046**

If you wish to inquire about this ruling, please contact

X  
X  
X

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in black ink and is positioned above the printed name and title.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose

cc: