



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201117037

FEB 23 2011

UIL No.: 9100.00-00

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SET:EP:RA:T1

Legend:

Taxpayer A.....\*\*\*\*\*

Taxpayer B.....\*\*\*\*\*

Financial Institution A.....\*\*\*\*\*

IRA A.....\*\*\*\*\*

Roth IRA X.....\*\*\*\*\*

Roth IRA Y.....\*\*\*\*\*

Amount 1.....\$\*\*\*\*\*

Amount 2.....\$\*\*\*\*\*

Amount 3.....\$\*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to a request dated \*\*\*\*\*, as supplemented by additional communication dated \*\*\*\*\*, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations ("regulations") on your behalf. You submitted the following facts and representations in connection with your request.

Taxpayer A and Taxpayer B are married and file joint Federal Income Tax Returns. Taxpayer A maintained IRA A and Roth IRA X. Taxpayer B maintains Roth IRA Y. In \*\*\*\*, Taxpayer A converted Amount 1 from IRA A to Roth IRA X. Taxpayer A and Taxpayer B each also contributed Amount 3 to Roth IRA X and Roth IRA Y, respectively. All accounts are maintained by Financial Institution A.

Taxpayer A and Taxpayer B filed their joint Federal Income Tax Returns using a CPA. After amending their \*\*\*\* Federal Income Tax Return to correct an unrelated error, the tax professional employed by Taxpayer A and Taxpayer B realized that for \*\*\*\*, Taxpayer A and Taxpayer B exceeded the adjusted gross income limits and that part of their regular contributions to Roth IRA X and Roth IRA Y were not allowed and that Taxpayer A's conversion of Amount 1 from IRA A to Roth IRA X was improper. At the time of this discovery by the return preparer, Taxpayer A and Taxpayer B had missed the deadline for recharacterizing the contributions. Taxpayer A and Taxpayer B represent that they are not under examination by the Internal Revenue Service (Service).

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 and Taxpayer B be granted a period of 60 days from the date of this letter ruling to recharacterize Amount 1 from Roth IRA X back to a traditional IRA, and Amount 2 from Roth IRA X and Amount 2 from Roth IRA Y, respectively, into traditional IRAs.

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 federal Income Tax Regulations ("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 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 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 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 I.T. 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. Furthermore, Q&A-2 provides that in the case of a husband and wife who file a joint federal income tax return, the modified adjusted gross income subject to the \$100,000 limit is the modified adjusted gross income derived from the joint return using the couple's combined income.

Section 1.408A-5, Q&A-3 of the I.T. Regulations provides that a contribution that is being recharacterized as a contribution to the second IRA is treated as having been originally contributed to the second IRA on the same date (in the case of a regular contribution) for the same taxable year that the contribution was made to the first IRA.

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 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) 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.

In this case, Taxpayer A and Taxpayer B were not eligible to do a Roth IRA conversion in \*\*\*\* because their modified adjusted gross income exceeded the limit of Code section 408A(c)(3). Also, Taxpayer A and Taxpayer B were each not eligible to contribute Amount 2 of their total contribution of Amount 3 to Roth IRA X and Roth IRA Y, respectively. Taxpayer A failed to recharacterize Amount 1 and Amount 2 from Roth IRA X back to a traditional IRA within the time permitted by law. Also, Taxpayer B failed to recharacterize Amount 2 from Roth IRA Y back to a traditional IRA within the time permitted by law. 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 relied on the services of their tax advisor in preparing their \*\*\*\* returns. Although Taxpayer A and Taxpayer B were ineligible for their \*\*\*\* Roth IRA conversion and were ineligible for a portion of their total regular contributions, Taxpayer A and Taxpayer B were unaware that they were ineligible until receiving notice from their tax professional upon the completion and filing of their \*\*\*\* Federal Income Tax Return, long after the deadline for a \*\*\*\* recharacterization. Taxpayer A and Taxpayer B were advised by their tax professional of the need to recharacterize Amount 1 and Amount 2 from Roth IRA X and Amount 2 from Roth IRA Y, respectively, but only after the deadline for recharacterization had passed. As a result, Taxpayer A and Taxpayer B requested this ruling after discovering the mistake, but prior to the Service discovering the failure to make a timely election to recharacterize. Thus, Taxpayer A and Taxpayer B satisfy clauses (i) and (v) of section 301.9100-3(b)(1) of the regulations. In addition, the statute of limitations on Taxpayer A and B's \*\*\*\* Federal Income Tax Return remains open and the interests of the government would not be prejudiced by providing relief. Accordingly, the Service concludes 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 to recharacterize Amount 1 and Amount 2 from Roth IRA X back to a traditional IRA. Also, Taxpayer B is granted a period not to exceed 60 days from the date of this letter to recharacterize Amount 2 from Roth IRA Y back to a traditional IRA.

This letter assumes that the above traditional IRAs and Roth IRA qualify under Code sections 408 and 408A, respectively, at all relevant times.

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

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

Should you have any concerns regarding this ruling, please contact \*\*\*\*\*, Identification Number \*\*\*\*\*, at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to \*\*\*\*\*.

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1