



Taxpayer A maintained Individual Retirement Arrangement ("IRA") X, a traditional IRA described in section 408 of the Internal Revenue Code (the "Code"). In December of Year 1, Taxpayer A instructed IRA custodian, Financial Institution D to convert Amount 1 from IRA X to a Roth IRA, described in section 408A of the Code. Taxpayer A represents that he did not receive either a confirmation that the conversion had been completed or a Form 1099-R from Financial Institution D reflecting any such transaction, prior to the due date for filing his individual tax return for 2008, and therefore concluded that a conversion did not occur in 2008. Tax Preparer G filed Taxpayer A's 2008 individual tax return by the extended due date, on or about Date 2 with no mention of any conversion.

In November of 2009, Taxpayer A and Tax Preparer G discussed a Roth conversion in connection with Taxpayer A's year-end tax planning for 2009. During a subsequent discussion with Financial Institution D, Tax Preparer G was advised that Amount 1 had been converted to a Roth IRA on Date 1. On Date 3, Financial Institution D furnished a copy of the Form 1099-R for 2008 to Tax Preparer G, reporting Amount 1 as a Roth IRA conversion for 2008. Taxpayer A represents that Financial Institution D could not confirm delivery of the original Form 1099-R for 2008 at an earlier date.

Taxpayer A represents that he first learned that the conversion of Amount 1 actually occurred on Date 1 in November of 2009. By this time, the deadline for recharacterizing the conversion in 2008 had passed. Prior to Date 4, Taxpayer A directed Financial Institution D to recharacterize Amount 2 as a contribution to a traditional IRA. Financial Institution D recharacterized Amount 2 as a traditional IRA on Date 4 and reported the recharacterization on a Form 1099-R for 2009. A copy of the Form 1099-R was sent to Taxpayer A in March of 2010.

Based on the foregoing facts and representations, Taxpayer A has requested a ruling that, pursuant to section 301.9100-3 of the Regulations he be granted until Date 4 to make an election under section 1.408A-5 of the Income Tax Regulations (the "I. T. Regulations") to recharacterize Amount 2 as a contribution 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 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) of the Code and section 1.408A-5 of the I.T. Regulations, 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 contribution.

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.

Prior to December 31, 2009, Section 408A(c)(3)(B) of the Code provided, in relevant part, that a taxpayer generally is not allowed to make a rollover contribution to a Roth IRA from an eligible retirement plan during any taxable year if the taxpayer's adjusted gross income for that year exceeds \$100,000. For taxable years beginning after December 31, 2009, the \$100,000 limitation on adjusted gross income in Code section 408(c)(3)(B) was eliminated.

Section 408A(d)(3)(C) provides that a conversion of a traditional IRA to a Roth IRA is treated as a rollover from the traditional IRA to the Roth IRA.

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) 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.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to elect to recharacterize the Roth IRA on or before the date prescribed by law, including extensions, for filing his Federal Income Tax Return for the year of contribution, was caused by his lack of awareness of the necessity of making an election as a result of Financial Institution D's failure to provide a timely Form 1099-R, thus making it impossible for Taxpayer A timely to elect to recharacterize his Roth IRA conversion back to a traditional IRA.

Based on the above, Taxpayer A meets the requirements of section 301.9100-3(b)(1) of the Regulations, clause (ii), for the 2008 tax year. In addition, since the statute of limitations is still open, under section 301.9100-3(c)(1)(ii) of the Regulations, granting relief will not prejudice the interests of the Government.

Accordingly, Amount 2, which was placed in a traditional IRA on Date 4 will be considered a valid recharacterization within the meaning of 408A(d)(6) of the Code and section 1.408A-5 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 directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Should you have any concerns regarding this ruling, please contact XXXXXXXXXX, Identification Number \*\*\*\*\*, at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose