



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201226038

APR 04 2012

T:EP:RA:T1

UIL No.: 9100.00-00

Legend:

Taxpayer A.....*****
TIN:

Taxpayer B.....*****
TIN:

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

IRA A.....Account No. *****

IRA B.....Account No. *****

IRA C.....Account No. *****

Roth IRA X.....Account No. *****

Roth IRA Y.....Account No. *****

Roth IRA Z.....Account No. *****

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

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

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

Dear *****.

This is in response to a request dated *****, as supplemented by correspondence 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. Taxpayer A maintained IRA A and IRA B and Taxpayer B maintained IRA C, all three constituting individual retirement arrangements ("IRAs") described in section 408 of the Internal Revenue Code (the "Code"). In February, ****, Taxpayer A converted Amount 1 from IRA A to Roth IRA X, and Amount 2 from IRA B to Roth IRA Y. Taxpayer B converted Amount 3 from IRA C to Roth IRA Z. All accounts are maintained by Financial Institution A.

Taxpayer A and Taxpayer B prepared their joint federal income tax return for **** and they have stated that they were unaware of their inability to convert their IRAs, due to losses from a listed transaction being disallowed and income being attributed to the taxpayers from loans on life insurance policies. Both items were discovered on audit by the Internal Revenue Service (Service).

In ****, the Service began an examination of the Taxpayers' joint **** Federal Income Tax Return. During the audit, the Service disallowed losses resulting from a listed transaction. Later, the Service recharacterized loans from the taxpayer's life insurance policy as income. The actions by the Service auditor caused Taxpayer A and Taxpayer B to exceed the adjusted gross income requirements for converting IRAs into Roth IRAs.

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 Roth IRA X, Roth IRA Y, and Roth IRA Z back to 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.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the regulations provide guidance concerning requests for relief submitted to the Internal Revenue Service ("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(b)(3)(ii) of the regulations provides that a taxpayer is deemed not to have acted reasonably or in good faith if the taxpayer was informed in all material respects of the required election and related tax consequences, but chose not to file 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 \$100,000 limit of Code section 408A(c)(3). Taxpayer A and Taxpayer B failed to recharacterize Roth IRA X, Roth IRA Y, and Roth IRA Z, respectively, back to traditional IRAs 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.

In ****, the Service began an examination of the Taxpayers' **** Federal Income Tax Return. Prior to the deadline for recharacterizing their Roth IRA conversions, the auditor noted that losses stemming from a listed transaction were to be disallowed and that the auditor would be looking at life insurance loans to determine if they were to be properly characterized as income to Taxpayer A and Taxpayer B. Prior to the deadline, Taxpayer A and Taxpayer B were told, in a letter from the auditor, of the need to recharacterize any and all Roth IRA conversions to avoid adverse tax consequences should their income exceed the modified adjusted gross income limit of Code section 408A(c)(3).

Taxpayer A and Taxpayer B, following their conference of right with the Service held on *****, submitted evidence intending to show that the taxpayers failed to make the election, after exercising reasonable diligence, in accordance with section 301.9100-3(b)(1)(iii) of the regulations, and that the taxpayers reasonably relied on a tax professional in accordance with section 301.9100-3(b)(1)(v) of the regulations.

Based on the above, Taxpayer A and Taxpayer B fail to meet the requirements of section 301.9100-3(b)(1)(i) of the regulations. Further, Taxpayer A and Taxpayer B fail to meet the requirements of sections 301.9100-3(b)(1)(iii) and 301.9100-3(b)(1)(v) of the regulations.

Accordingly, we rule that, pursuant to section 301.9100-3 of the regulations: Taxpayer A is not granted an extension of time to recharacterize Roth IRA X and Roth IRA Y back to traditional IRAs. Taxpayer B is not granted an extension of time to recharacterize Roth IRA Z back to a traditional IRA.

This letter assumes that the above traditional IRAs and Roth IRAs 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.

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