



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

201234032

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 30 2012

Uniform Issue List: 9100.00-00

TEP:RA:T1

Legend:

Taxpayer A	=
Taxpayer B	=
IRA C	=
Roth IRA D	=
Financial Institution E	=
Individual F	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated May 20, 2011, as supplemented by additional information dated October 26, November 8, 2011, April 25, and May 2, 2012, from your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("P&A Regulations").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A is married to Taxpayer B. Taxpayer A maintained IRA C, an individual retirement account ("IRA") under section 408(a) of the Internal Revenue Code (the "Code"), with Financial Institution E. Taxpayer A also maintained Roth IRA D, an IRA under section 408A of the Code, with Financial Institution E.

On April 7, 2008, Taxpayer A transferred Amount 1 from IRA C to Roth IRA D. At this time, Taxpayer A believed that he had successfully converted his traditional IRA to a Roth IRA unaware he was ineligible to do so for the 2008 tax year because Taxpayers A and B had adjusted gross income ("AGI") of Amount 2. For this tax year, the AGI limit under section 408A(c)(3)(B) of the Code for converting a traditional IRA to a Roth IRA was \$100,000, with AGI as modified under section 408A(c)(3)(C). Since the modified AGI of Taxpayers A and B exceeded the limit for conversions during the 2008 tax year, the conversion was improper. The 2008 tax year is not a closed year under the statute of limitations.

Taxpayer A also was not aware that a conversion to a Roth IRA could be recharacterized back to a traditional IRA by making an election to do so on or before the due date (plus extensions) for the tax year in question. Taxpayer A also believed that all required documentation had been furnished to Individual F, a certified public accountant (CPA), in connection with the preparation of Taxpayer A and B's 2008 Form 1040 tax return. Taxpayers A and B received a notice, dated February 22, 2010, from the Internal Revenue Service (the "Service"), advising them that Amount 1 had not been included in their 2008 Form 1040 tax return in accordance with the Form 1099 R that was filed with the Service. Then, upon the advice of Individual F, Taxpayer A tried to recharacterize the conversion from the traditional IRA to the Roth IRA. However, the trustee of Roth IRA D, Financial Institution E, refused to complete the recharacterization, telling Taxpayer A that it was prohibited from taking such action after October 15, 2009, the extended due date of Taxpayer A and B's Form 1040 tax return, unless the Taxpayers could produce a letter of authorization from the Service.

The facts also indicate that Taxpayers A and B furnished the above-mentioned Form 1099 R to Individual F as well as all other necessary financial information for the 2008 tax year so that their Form 1040 return could be prepared. They relied on Individual F to complete their return accurately and otherwise advise them on tax matters. However, Individual F inadvertently overlooked information contained on the Form 1099 R. Since the modified adjusted gross income of Taxpayers A and B exceeded \$100,000 for tax year 2008, Taxpayer A was required to make a timely recharacterization of the amount transferred from IRA C to Roth IRA D. In a letter dated March 3, 2010, to the Service, Individual F admitted that because he overlooked certain information on Form 1099 R, he failed to advise the Taxpayers that Amount 1, which was converted to Roth IRA D, had to be recharacterized and transferred back to a traditional IRA.

Based on the foregoing facts and representations, you have requested that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A be granted an additional period of time 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 P&A Regulations, Code section 408A(d)(6) 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-2(c)(1) of the I.T. Regulations provides, in effect, that if the amount of the contribution being recharacterized was contributed to a Roth IRA and distributions or additional contributions have been made from or to that IRA at any time, then the net income attributable to the amount of a contribution being recharacterized is determined by allocating to the contribution a pro-rata portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula: $\text{Net Income} = \text{Contribution} \times (\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance}) / \text{Adjusted Opening Balance}$. The items in the above formula are defined in section 1.408A-5, Q&A-2(c)(2) of the I.T. Regulations.

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) provided, with respect to the 2008 tax year, that an individual with modified AGI 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 AGI 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 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 P&A 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, 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 of the P&A 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 P&A 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 P&A 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 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)(i) of the P&A Regulations provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been made timely.

Section 301.9100-3(c)(1)(ii) of the P&A 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 Taxpayer A and B's request for a ruling dated May 20, 2011, the authorized representative states that it is the position of the Taxpayers that the grant of the extension requested will not prejudice the interests of the Government in that the tax liability of the Taxpayers will be no lower than would have been the case if the election to recharacterize Roth IRA D to a traditional IRA had been made timely.

In this case, the adjusted gross income of Taxpayers A and B exceeded the \$100,000 limit under section 408A(c)(3)(B) of the Code for tax year 2008. Thus Taxpayers A and B were ineligible to convert Amount 1 from traditional IRA C to Roth IRA D in 2008. Taxpayers A and B were unaware they were ineligible to convert a traditional IRA to a Roth IRA until they received the notice, dated February 22, 2010, from the Service, advising them that Amount 1 had not been reported on their 2008 Form 1040 tax return. In addition, their tax preparer who had all necessary information to prepare their tax return for the 2008 tax year and advise them of the necessity to recharacterize the amount converted to Roth IRA D in 2008 admitted that he failed to do so. Taxpayers A and B filed this request for section 301.9100 relief after discovering they were ineligible to make the conversion.

With respect to Taxpayers' 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 that Taxpayer A acted reasonably and in good faith with respect to making the election to recharacterize the failed conversion as a traditional IRA. Specifically, the Service has concluded that Taxpayer A has met the requirements of clauses (iii) and (v) of section 301.9100-3(b)(1) of the regulations and that granting relief would not prejudice the interests of the Government. Therefore, Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to recharacterize Roth IRA D back to a traditional IRA. This ruling only applies to amounts converted from traditional IRA C to Roth IRA D and not any regular contributions to the Roth IRA.

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 all the traditional IRAs and Roth IRAs described above meet the requirements of Code sections 408 and 408A, respectively, at all relevant times.

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

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
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Notice 437

cc: