



TAX EXEMPT AN  
GOVERNMENT ENTITIES  
DIVISION

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

200416014

JAN 21 2004

*T:EP:BA:UK:IT4*

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Legend:

Taxpayer A            -            \*\*\*\*\*

Taxpayer B            -            \*\*\*\*\*

IRA X                    -            \*\*\*\*\*  
\*\*\*\*\*  
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IRA Y                    -            \*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
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Amount C              -            \$\*\*\*\*\*

Dear \*\*\*\*\*

This is in response to a letter dated July 18, 2003, in which you, through your authorized representative, requested relief under section 301.9100-3 of the Procedure and Administration Regulations. The following facts and representations support your ruling request.

Taxpayer A is married to Taxpayer B. Taxpayer A maintained IRA X and IRA Y, which were traditional individual retirement arrangements described in section 408(a) of the Internal Revenue Code ("Code"). In April of \_\_\_\_\_, Taxpayer A directly transferred all of her IRA X into a Roth IRA. During \_\_\_\_\_ Taxpayer A also directly transferred all of IRA Y into a Roth IRA, except the balance of the account of Amount C, which was withheld for federal income taxes. Taxpayer A has not attained age 59 1/2.

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At the time of the rollovers and throughout 2001, Taxpayer A believed that she was qualified to roll over IRA X and IRA Y into a Roth IRA described in section 408A of the Code. When their Joint Federal income tax return was prepared in April, neither Taxpayer A, Taxpayer B, nor the tax return preparer realized that the rollover contributions to the Roth IRA was not qualified under section 408A(c)(3)(B) of the Code because their adjusted gross income exceeded \$100,000. Taxpayer A and Taxpayer B did not become aware of the problem until April, , when their tax returns were prepared. An affidavit from their authorized representative who is also a member of the accounting firm that prepared their calendar year Federal Form 1040 indicates that the review procedures used by the firm and the error report of the software program used by the firm did not recognize the error until when the returns were prepared.

As of this date, Taxpayer A had not recharacterized her Roth IRA as a traditional IRA.

Based on the above facts and representations, the following ruling is requested:

Taxpayer A requests an extension of 60 days measured from the date of this ruling letter to reclassify the amounts rolled over from IRA X and IRA Y into her Roth IRA created in as a traditional IRA pursuant to section 301.9100-3 of the regulations.

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 Income Tax 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 to the transferor IRA. Under sections 408A(d)(6) and 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 of the regulations, Question and Answer-6, 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 specific information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Section 408A(c)(3)(B) of the Code provides, in relevant part, that an individual with adjusted gross income 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 account other than a Roth IRA during that taxable year.

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Section I.408A-4 of the regulations, Q&A-2, provides, in summary, 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. Q&A-2 further provides that a married individual is permitted to convert a traditional IRA to a Roth IRA only if the individual and his/her spouse file a joint Federal income tax return. Furthermore, the AGI 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 Procedure and Administration Regulations, in general, provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) of the regulations provides that the Commissioner of the Internal Revenue Service, in his discretion, may grant a reasonable extension of time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for making of a 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 of the regulations 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(a) of the regulations provides the application 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 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 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

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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 timely filed their Federal income tax return. At the time of filing, Taxpayer A was not aware that she was ineligible to convert her traditional IRAs into a Roth IRA in because their modified adjusted gross income exceeded \$100,000. Furthermore, she reasonably relied on qualified professionals who failed to advise her that her purported conversion was not in accordance with the Internal Revenue Code and the regulations promulgated thereunder, and who failed to advise her to make the election to recharacterize her Roth IRA to a traditional IRA before the time period under Code section 408A(d)(6) expired. Taxpayer A was not alerted to her failure to make an election to recharacterize her Roth IRA to a traditional IRA until when Taxpayer A and Taxpayer B had their Federal income tax return prepared at which time the period under Code section 408A(d)(6) had passed.

In this case, Taxpayer A and her spouse filed this request for section 301.9100 relief shortly after discovering that she was ineligible to roll over her traditional IRAs into a Roth IRA, and before the Internal Revenue Service discovered the rollovers were not allowable under section 408A(c)(3)(B) of the Code. Calendar year is not a "closed" year.

With respect to the request for relief, we believe that based on the information submitted and the representations contained therein, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have been met, and Taxpayer A acted reasonably and in good faith with respect to requesting an extension of time in order to recharacterize her Roth IRA as a traditional IRA. Specifically, the Service has concluded that Taxpayer A has met the requirements of clauses (i), (iii) and (iv) of section 301.9100-3(b)(1) of the regulations. Therefore, Taxpayer A is granted an extension of 60 days measured from the date of this ruling letter to recharacterize her Roth IRA as a traditional IRA.

In order to effectuate this ruling letter, Taxpayer A and B should file an amended joint calendar year Federal Form 1040 consistent therewith if they have not already done so.

Please note that this ruling authorizes the recharacterization of amounts currently in Taxpayer A's Roth IRA. It does not apply to any amounts distributed from either IRA X or IRA Y that were not transferred to Taxpayer A's Roth IRA during calendar year

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.

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This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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

If you have any questions please contact \*\*\*\*\*.

Sincerely yours,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

- Deleted copy of this letter
- Notice of Intention to Disclose, Notice 437