



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

OCT 23 2008

SE:T:EP:RA:T1

Uniform Issue List Number: 9100.00-00

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

Legend:

- Taxpayer A = \*\*\*\*\*  
\*\*\*\*\*
- Taxpayer B = \*\*\*\*\*  
\*\*\*\*\*
- Financial Institution C = \*\*\*\*\*  
\*\*\*\*\*
- Officer D = \*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*
- Financial Institution E = \*\*\*\*\*  
Traditional IRA X = \*\*\*\*\*  
\*\*\*\*\*
- Roth IRA Y = \*\*\*\*\*  
\*\*\*\*\*
- Amount 1 = \*\*\*\*\*

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

This is in response to a letter dated December 11, 2007, submitted by your authorized representative on your behalf, as supplemented by correspondence dated December 5 and 27, 2007, and March 18, July 14, August 26, and September 23, 2008, in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("regulations").

In support of your request for relief you have submitted the following facts and representations:

Taxpayer A and her spouse, Taxpayer B, ("Taxpayers"), filed joint returns for the \*\*\*\* and \*\*\*\* tax years. Taxpayer A maintains a "traditional" individual retirement

arrangement (IRA) and a "Roth" IRA, with Financial Institution C as custodian of the IRAs. In \*\*\*\*, Taxpayer A successfully converted traditional IRA funds to a Roth IRA and was aware that such conversions could take place only during tax years in which the Taxpayers' modified adjusted gross income ("AGI") did not exceed \$100,000. On \*\*\*\* \*\*, \*\*\*\*, Taxpayer A converted Amount 1 from Traditional IRA X to Roth IRA Y. In \*\*\*\*, the Taxpayers' earned income was substantially less than \$100,000. However, the Taxpayers filed an extension for their \*\*\*\* federal income tax return due to not having received several K-1 forms from Financial Institution E. The last K-1 form was received by the Taxpayers and presented to the tax preparer on \*\*\*\* \*\*, \*\*\*\*. The \*\*\*\* income tax return was completed and provided to the Taxpayers for filing by the \*\*\*\* \*\*, \*\*\*\* deadline. The tax return showed a modified AGI for the Taxpayers in excess of \$100,000, thus rendering Taxpayer A ineligible to convert Traditional IRA X to Roth IRA Y during that tax year. The tax return was timely filed without including the IRA conversion in income since the recharacterization was intended to be completed.

As early as \*\*\*\* \*, \*\*\*\*, Taxpayer A contacted Officer D of Financial Institution C, stating that "there will be no way" that she and Taxpayer B would be able to "reduce" their \*\*\*\* modified AGI below \$100,000. Officer D suggested that the Taxpayers wait until their taxes were finalized prior to making a final decision on whether to recharacterize Roth IRA Y as a traditional IRA. (Officer D's "suggestion" was accompanied by a disclaimer that he and Financial Institution C were not tax advisors, and by a further suggestion that Taxpayer A check with her tax advisor "to determine the best course of action.")

On \*\*\*\* \*\*, \*\*\*\*, Taxpayer A again contacted Officer D and stated that she would, in fact, have to recharacterize Roth IRA Y as a traditional IRA. At this point, it was apparent that neither Taxpayer A nor Officer D was aware that October 15, \*\*\*\* also was the deadline for completion of the Roth IRA Y recharacterization for the \*\*\*\* tax year, as no effort was made by either party to assure that recharacterization was completed by the deadline date. On \*\*\*\* \*\*, \*\*\*\*, Taxpayer A again contacted Officer D and completed the recharacterization paperwork needed by Financial Institution C. However, Officer D relates that it "was after this time" that it was brought to his attention (by Financial Institution C's operations department) that the October 15<sup>th</sup> deadline had not been met, and that Taxpayer A would need to consult a tax advisor for "appropriate action." Financial Institution C denied Taxpayer A's request for recharacterization because it was after the deadline for completion of such transactions established under section 408A(d)(6) of the Internal Revenue Code ("Code") and section 1.408A-5 of the federal Income Tax Regulations ("I. T. Regs."). Taxpayer A filed this ruling request seeking relief prior to discovery by the Internal Revenue Service ("Service") that a recharacterization of the failed conversion had not been completed timely.

Based on the facts and representations provided above, Taxpayer A requests a ruling that, pursuant to section 301.9100-3 of the regulations, she be granted a period not to

exceed six months from the date of issuance of this ruling letter to complete an election under section 1.408A-5 of the I.T. Regs. to recharacterize the Roth IRA Y 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. Regs. 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 and A -6 of the I.T. Regs. describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that either has been contributed to a Roth IRA or 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.

Code section 408A(c)(3) provides, in relevant part, 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 arrangement other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2 of the I.T. Regs. 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. Furthermore, Q&A-2(b) provides that a husband and wife must file a joint Federal Income Tax Return to convert an amount to a Roth IRA, and 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.

Section 1.408A-5, Q&A-2(a) of the I.T. Regs. provides guidance with respect to the calculation of income attributable to recharacterized amounts.

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) of the regulations 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 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 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 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 filed her request for relief before the failure to make a timely election was discovered by the Service. Moreover, because the grant of an extension only defers the payment of tax on the IRA distributions, the interests of the government with relation to the revenues have not been prejudiced. Further, the \*\*\*\* calendar year is not a closed tax year.

Therefore, with respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, you have met the requirements of sections 301.9100-1 and 301.9100-3 of the regulations, and that you have acted reasonably and in good faith with respect to making the election to

recharacterize your failed conversion as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clause (i) of section 301.9100-3(b)(1) of the regulations. Therefore you are granted a period of 60 days from the date of the issuance of this letter ruling to recharacterize Amount 1, plus earnings thereon, of Roth IRA Y as a traditional 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 Traditional IRA X and Roth IRA Y meet the requirements of Code sections 408 and 408A, respectively, at all relevant times.

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

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions pertaining to the ruling, please contact SE:T:EP:RA:T1 for further information.

Sincerely,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1