200352020

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.00-00

OCT -3 2003
T:EP:RA:T1

Legend:
Taxpayer A =

Taxpayer B =

Company Q =

IRA X =

Roth IRA Y =

Dear

This is in response to a ruling request dated June 28, 2002, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations. The following facts and representations support your ruling request.

Taxpayer A maintained IRA X, a traditional individual retirement arrangement described in section 408(a) of the Internal Revenue Code ("Code"), with Company Q. In December 1999, Taxpayer A converted IRA X to Roth IRA Y. Taxpayer A was over age 70 ½ in 1999.

Prior to the Roth IRA conversion, Company Q did not advise Taxpayer A of any adverse tax consequences that would follow from the conversion of his traditional IRA to a Roth IRA. Taxpayer A is married to Taxpayer B. Their adjusted gross income for 1999 exceeded the limit found at section 408A(c)(3)(B) of the Code. Specifically, Company Q did not advise Taxpayer A and Taxpayer B that they were ineligible to convert the traditional IRA X to the Roth IRA Y because their income exceeded the limit allowable under section 408A(c)(3)(B) of the Code. Taxpayer A and Taxpayer B assert that they were unaware of this limit at the time of the conversion, and that they believed the adjusted gross income limitation was $160,000.

In February 2002, while preparing their 2001 Federal Income Tax Return, Taxpayer A and Taxpayer B realized their 1999 error. Taxpayer A represents that he contacted Company Q in order to recharacterize his Roth IRA Y; however, Company Q did not permit the recharacterization without permission from the Internal Revenue Service ("Service") in the form of a private letter ruling. Taxpayer A and Taxpayer B represent that until February 2002 they were both unaware of the 408A(c)(3)(B) limitation and they also believed that the traditional IRA X had been properly converted. In addition, as of the date of this ruling request, the Internal Revenue Service has not made Taxpayer A aware of his improper IRA conversion.

Taxpayers A and B filed a joint calendar year 1999 Federal Income Tax Return. Based on the above, you request the following letter ruling: that Taxpayer A and Taxpayer B are granted the authority, under section 301.9100-3 of the Procedure and Administration Regulations, to recharacterize Taxpayer A's Roth IRA Y as 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 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 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 contribution.

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 specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Section 1.408A-4, 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. Section 1.408A-4, Q&A-2, further provides, in summary, that an individual and his spouse must file a joint Federal Tax Return to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income 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 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 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 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 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 taxpayers 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)(iii) of the regulations provides that a taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the Internal Revenue Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c)(1)(i) of the 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 timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are

affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability then if the election had been timely made.

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 taxpayers receipt of a ruling granting relief under this section.

In this case, Taxpayer A and Taxpayer B were ineligible to convert Taxpayer A's traditional IRA X into Roth IRA Y because Taxpayer A and Taxpayer B 's combined modified adjusted gross income exceeded $100,000 for tax year 1999. 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.

Although Taxpayer A and Taxpayer B were ineligible for the 1999 Roth IRA conversion, they both were unaware of their ineligibility to do so until February 2002 when they were so informed through their own investigation. Upon realizing their error, Taxpayer A and Taxpayer B requested relief from the Service before the Service discovered Taxpayer A's ineligibility to convert IRA X to Roth IRA Y.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of section 301.9100-1 and 301.9100-3 of the regulations have been met, and that you have acted reasonably and in good faith with respect to making the election to recharacterize Roth IRA Y back to a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clause (i), (iii), and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, pursuant to section 301.9100-3 of the regulations, Taxpayer A and Taxpayer B are granted an extension of sixty (60) days from the date of the issuance of this letter ruling to recharacterize Roth IRA Y back to a traditional IRA.

The recharacterization of the Roth IRA to a Traditional IRA relates retroactively to calendar year 1999, the calendar year of the attempted conversion. As a result, there is no excise tax due under Code section 4973(f) with respect to calendar year 2000.

Please note that in conjunction with recharacterizing Taxpayer A's Roth IRA Y, Taxpayer A and Taxpayer B must file an amended calendar year 1999 Federal Income Tax Return consistent with this ruling letter if they have not already done so. In addition, this letter ruling applies solely to the amount remaining in the Roth IRA Y as of the date of the recharacterization.

With further respect to the issue raised herein, "Final" Income Tax Regulations under Code section 401(a)(9) and 408(a)(6) were published in the Federal Register at 67

Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). Section 1.401(a)(9)-8 of the "Final" Regulations, Question and Answer-16, provides that a section 242 (b) election may be revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and the applicable section of the regulations. If the section 242(b) election is revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations and the total amount of the distributions which would have been required to be made prior to the date of the revocation in order to satisfy section 401(a)(9), but for the section 242(b)(2) election, have not been made, the trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which was required to have been distributed to satisfy the requirements of section 401(a)(9) and continue distributions in accordance with such requirements.

Since Taxpayer A believed that he had validly converted his traditional IRA, IRA X, to a Roth IRA, IRA Y, he did not believe that such IRA was subject to the minimum distribution requirements of Code section 401(a)(9), made applicable to an IRA pursuant to Code Section 408(a)(6). However, if an when the recharacterization granted above takes place, the Code section 401(a)(9) minimum required distribution rules will be applicable to the resultant traditional IRA. Although the regulations do not specifically address the consequences of a recharacterization made subsequent to the required beginning date such that some of the required distributions have been missed in the interim, such a situation is analogous to the revocation of the section 242(b)(2) election described above. The IRA resulting from the recharacterization would be treated as if it had been in existence as of calendar year 1999, pursuant to the relief granted above under section 301.9100-3 of the regulations (extending the normal deadline under 408A(d)(6) of the Code). Therefore, using the same logic as applied to the revocation of the 242(b) election described in the regulation cited above, the resultant traditional IRA must distribute by the end of the calendar year following the calendar year in which the recharacterization occurs the total amount not yet distributed which was required to have been distributed to satisfy the requirements of section 401(a)(9) of the Code and continue distributions in accordance with such requirements. Taxpayer A is thus granted such relief in order to take his required minimum distributions for 1999 and subsequent years, to the extent not already taken, from the traditional IRA that results from the recharacterization granted above, should such recharacterization take place.

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 that may be applicable thereto.

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.

This letter ruling assumes that all of the IRAs referenced herein will meet the requirements of either Code section 408 or Code section 408A (to the extent applicable) at all times relevant thereto.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Should you have any concerns with this letter, please contact .

Sincerely,

Donzell Littlejohn

Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437