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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 19 2002

Uniform Issue List: 9100.00-00

T:EP:RA:T4

Legend:

Taxpayer A=

Individual B=

Company M=

IRA X=

Roth IRA Y=

IRA Z =

Date 1=

Date 2 =

Amount 1=

Amount 2=

Dear :

This is in response to the May 3, 2002 letter submitted by your authorized representative, as supplemented by correspondence dated May 24, 2002, and June 20, 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, an individual retirement arrangement described in section 408(a) of the Internal Revenue Code.

On Date 1, a date in late , Taxpayer A met with Individual B, a Company M investment consultant, for a portfolio review. Individual B advised Taxpayer A at that time that she should sell certain mutual funds that were held in taxable accounts and that she should also convert IRA X to a Roth IRA. At no time did Individual B inform Taxpayer A of the adjusted gross income ("AGI") limit found at section 408A(c)(3)(B) of the Code which, if exceeded, would cause Taxpayer A to be ineligible to convert a traditional IRA to a Roth IRA in 1998. In fact, Taxpayer A disclosed her entire financial position to Individual B at this meeting, including the fact that she expected to have AGI of around $ for without any further taxable transactions and Individual B still recommended that Taxpayer A sell certain mutual funds that, unbeknownst to Taxpayer A, would cause her AGI to exceed the AGI limit. Based on the recommendation of Individual B, on Date 1, Taxpayer A converted IRA X to a Roth IRA account, Roth IRA Y. Taxpayer A also sold mutual funds in which generated capital gains of Amount 1, which, when added to Taxpayer A's wages, taxable interest, and dividend income, caused Taxpayer A to exceed the AGI limit found at section 408A(c)(3)(B) of the Code.

At the time of the conversion and throughout calendar year , Taxpayer A believed that she was qualified to make the conversion described above under Code section 408A.

Taxpayer A timely filed her calendar year Federal Income Tax Return (Form 1040).

Taxpayer A used a popular commercial software program to prepare her , and Federal Income Tax Returns. Taxpayer A first became aware that she was ineligible to convert to a Roth IRA in while preparing her Federal Income Tax Return in April Up until this point, Taxpayer A had believed that the Form 5329 that was generated by her tax return software every year represented income tax due as a result of the Roth IRA conversion spread out ratably over a 4-year period. She was unaware that this tax was actually an excise tax due to the improper conversion. However, she timely filed such form with her , and Federal Income Tax Returns and paid the applicable taxes.

This ruling request was submitted before the Internal Revenue Service discovered the failure to recharacterize.

On Date 2, a date on or before April 15, 2002, Taxpayer A recharacterized Roth IRA Y as a traditional IRA, IRA Z. Also, on Date 2, Taxpayer A filed an amended Federal Income Tax Return seeking to correct her payment of the excise tax. The amended Federal Income Tax Return seeks a refund of Amount 2 originally paid as excise tax on the improper Roth IRA conversion, on the theory that the Roth IRA has been recharacterized back to a traditional IRA.

Based on the above, you, through your authorized representative, request the following letter ruling:

That, pursuant to section 301.9100-3 of the regulations, Taxpayer A's recharacterization of her Roth IRA, Roth IRA Y, to a traditional IRA, IRA Z, was valid and timely made and therefore Taxpayer A will be treated for Federal Income Tax purposes as if she had never converted IRA X into a Roth IRA.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the Internal Revenue 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 returns 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 specified 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 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 plan other than a Roth IRA during that taxable year.

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.

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)) 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 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.

Announcement 99-57, 1994-24 I.R.B. 50 (June 14, 1999), provided that a taxpayer who timely filed his/her 1998 Federal Income Tax Return would have until October 15, 1999

to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Announcement 99-104, 1999-44 I.R.B. 555 (November 1, 1999), provided that a taxpayer who timely filed his/her 1998 Federal Income Tax Return would have until December 31, 1999 to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Taxpayer A timely filed her Federal Income Tax Return. As a result, she was eligible for relief under either Announcement 99-57 or Announcement 99-104. However, she missed the deadlines found in said Announcements. Therefore, it is necessary to determine if she is eligible for relief under the provisions of section 301.9100-3 of the regulations.

In this case, Taxpayer A was ineligible to convert her IRA X to Roth IRA Y since her adjusted gross income exceeded $. However, until she discovered otherwise, Taxpayer A believed that she was eligible to convert her IRA X to a Roth IRA. Taxpayer A filed this request for section 301.9100 relief shortly after discovering that she was ineligible to convert IRA X to a Roth IRA and, as noted above, before the Service discovered her failure to comply with the Announcements referenced above.

With respect to your 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 you have acted reasonably and in good faith with respect to making the election to recharacterize your Roth IRA as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the regulations.

Further, we believe that granting relief will not prejudice the interests of the government. Although, calendar year is now a "closed" tax year, the taxpayer had already taken all necessary actions to recharacterize her Roth IRA and amend her Federal Income Tax Return on Date 2. On Date 2, calendar year was not yet a "closed" tax year. This ruling merely validates the recharacterization that was performed on Date 2 and does not attempt to give the taxpayer the ability to otherwise engage in subsequent transactions affecting calendar year .

Therefore, we conclude that your recharacterization of your Roth IRA, Roth IRA Y, to a traditional IRA, IRA Z, was valid and timely made and therefore you will be treated for Federal Income Tax purposes as if you had never converted IRA X into a Roth IRA in

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 taxpayer 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.

This ruling letter was prepared by of this Group. He may be contacted at

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

Sincerely yours,

/s/ Alan Pipkin

Alan C. Pipkin
Manager, Technical Group 4
Employee Plans