Uniform Issue List: 9100.00-00

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

200220029

FEB 22 2002

T:EP:RA:T4

Legend:

Roth IRA:

Dear ****:

This is in reply to a request for a ruling submitted on January 12, 2001, by your authorized representative concerning a request to recharacterize a Roth IRA created in 1998 by a direct transfer of funds from a qualified plan under section 401(a) of the under the following circumstances.

In 1998, you were eligible to receive a distribution from a retirement plan qualified under section 401(a) of the Internal Revenue Code (the "Code") your former employer. After discussing the matter with a representative of a brokerage house, the necessary paperwork was completed and executed, and the funds were transferred directly from the qualified retirement plan to your Roth IRA. In September of 1998, you made a $2,000 annual contribution to your Roth IRA.

By letter dated November 29, 1999, the Service notified you that you were not eligible to make a Roth IRA conversion because your modified adjusted gross income for 1998 exceeded $100,000. As of the date of this request, these funds remain in the Roth IRA.

The following ruling is requested on your behalf.

You request that an extension of time be granted pursuant to section 301.9100-1 of the Procedure and Administrative Regulations to recharacterize the amounts that are improperly in your Roth IRA at the brokerage house to a traditional IRA described in section 408(a) of the Code.

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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 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 another type of IRA. Relief under section 301.9100-3 of the regulations involves an extension of time for the recharacterization of a Roth IRA to a traditional IRA.

In this case, relief under this provision is not available because there was no traditional IRA described in section 408(a) of the Code. Instead, the distribution from the qualified plan was transferred directly to the Roth IRA described in section 408A of the Code.

Section 402(c)(1) of the Code provides for the exclusion from income if (A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, (B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and (C) in the case of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(8)(B) of the Code provides that the term "eligible retirement plan" means -- (I) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract, (iii) a qualified trust, and (iv) an annuity plan described in section 403(a).

In order for a distribution from a qualified plan to be excludable under section 402 of the Code, the distribution must transferred to an "eligible retirement plan" described in section 402(c)(8)(B) of the Code.

During the conference held on July 5, 2001, and in the post-conference brief, your authorized representative asked for relief under section 301.9100 because the 60 day period was not satisfied due to the error of the financial institution. Your representative asks that the 60 day rollover period be waived to allow you to transfer the funds from your Roth IRA into an traditional IRA.

In the alternative, your representative requests a closing agreement pursuant to section 7121 of the Code. Rev. Proc. 2001-17, 2000-7 I.R.B. 589, consolidates the administrative programs and closing agreement programs for the employee plans matters including the Self-Correction, Walk-in Closing Agreement Program and the Voluntary Compliance Resolution Program and the Tax-Sheltered Voluntary Correction Program. However, these administrative programs have not been exended to include closing agreements for individual retirement accounts under section 408(a) of the Code or Roth IRAs described in section 408A of the Code.

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Your representative also refers to section 402(c)(3)(B) of the Code (concerning hardship exception) which provides that the Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other event beyond the reasonable control of the individual subject to such requirement. The representative pointed to the Conference Report which indicates that one of the circumstances in which the Secretary can waive the 60-day requirement is satisfied if the error is due to a financial institution.

We cannot apply this provision because section 402(c) (2)-(3), as amended by Pub. Law. 107-16, applies to distributions after December 31, 2001.

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

The original letter ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you are experiencing hardship, you may wish to submit an offer in comprimise to your local Taxpayer Advocate. We are enclosing a copy of Publication 1546, which describes how to get help with unresolved tax problems. If you have any questions please contact me or **** ********** ********, at **********.

Sincerely yours,

Alan Pipkin, Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437
Publication 1546

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