200329047

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 23 2003

T:EP:RA:T3

Uniform Issue List: 408.00-00

ATTN

Legend:
Taxpayer A =

Taxpayer B =

IRA W =

IRA X =

Roth IRA Y =

Roth IRA Z =

Company Q =

Dear:

This is in response to a ruling request dated January 9, 2003, 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.

Taxpayers A and B maintained IRAs W and X, respectively, traditional individual retirement arrangements described in section 408(a) of the Internal Revenue Code

("Code"), with Company Q. In December 2001, following the advice of a Company Q financial advisor, Taxpayers A and B converted IRAs W and X into Roth IRAs Y and Z, respectively, also with Company Q. Company Q advised Taxpayer A and B that these conversions had to be done by the end of calendar year 2001, even though calculations had not been completed to assure eligibility per the $ 100,000 adjusted gross income ("AGI") requirement. At this time Company Q stated that if Taxpayer A and B's joint AGI should total greater than $ 100,000, recharacterization could be easily accomplished via submission of a form available from Company Q upon request. Neither Company Q nor Company Q's recharacterization form mentioned a deadline.

On April 13, 2002, Taxpayer A and B received approval for a four-month extension to file their 2001 Federal income tax return. The 2001 tax return submitted on August 9, 2002 reflected an AGI in excess of $ 100,000. Taxpayer A and B reasoned that they had until the end of the year in which they submitted their 2001 tax return to perform the required recharacterization back from Roth IRAs to Traditional IRAs. Taxpayers A and B filed a joint calendar year 2001 Federal Form 1040. 2001 is not a "closed" tax year.

During the first week of November, 2002 via telephone contact with a representative of Company Q, Taxpayer A and B obtained forms for recharacterization of Roth IRA Y and Z back to traditional IRAs respectively. Subsequently, upon telephone contact with Company Q for clarification of information requested in the recharacterization forms, Taxpayers A and B were advised they had passed the deadline for their recharacterization(s) and Company Q could not provide assistance in the matter.

As of the date of this ruling request, Taxpayers A and B have not recharacterized their Roth IRAs Y and Z as traditional IRAs.

Based on the above, you request the following letter ruling:

> That Taxpayer A and B are granted a period not to exceed sixty days from the date of this ruling to recharacterize their respective Roth IRAs Y and Z as traditional IRAs.

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(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 letter ruling granting relief under this section.

In this case, Taxpayers A and B were ineligible to convert IRAs W and X to Roth IRAs Y and Z. Also, Company Q was aware that Taxpayers A and B were potentially subject to the $100,000 AGI limit and might be required to recharacterize their conversion(s) but failed to inform Taxpayer A and B of the deadline to do this. Therefore, it is necessary to determine whether, under this set of facts, Taxpayers A and Taxpayer B are eligible for relief under the provisions of section 301.9100-3 of the regulations.

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 IRAs as traditional IRAs. Specifically, the Service has concluded that you have met the requirements of clauses (i) and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of sixty days from the date of the issuance of this letter ruling to so recharacterize.

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.

Note: in order to effectuate any recharacterization(s), Taxpayers A and B must file an amended calendar year 2001 Federal Form 1040 consistent with this letter ruling if they have not already done so.

Should you have any concerns with this letter, please contact T:EP:RA:T3, Badge ID at .

Sincerely,

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government Entities Division

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