200426023

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.00.00

APR 0 1 2004

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

Company M =

Tax Program N =

Dear.:

This is in response to a ruling request dated xxxxxxx, 2003, as supplemented by additional correspondence dated xxxxxxxxx, 2003, xxxxxxxxxx, 2004 and xxxxxxxx, 2004 in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations have been submitted:

Taxpayer A maintained a traditional individual retirement account (IRA X) with Company M. On , he converted IRA X to a Roth IRA (IRA Y) maintained with Company M. At the time of the conversion, Taxpayer A was single and had a modified adjusted gross income in of . On

, Taxpayer A married Taxpayer B. Subsequent to the purported transaction, Taxpayers A and B discovered that their combined adjusted gross income ( ) for calendar year exceeded the limit found at section 408A(c)(3)(B) of the Internal Revenue Code ("Code"). At the time of the purported conversion, Taxpayers A and B were unaware they were not eligible to convert his traditional IRA to a Roth IRA.

Taxpayers A and B used Tax Program N in the preparation of their joint Federal income tax return. Tax Program N calculated the 6% excise tax on excess contributions under section 4973 of the Code and Taxpayers A and B paid this amount with their return. In preparing their return Taxpayers A and B were informed that the excise tax would apply each year until they withdrew the excess contribution, which resulted from the conversion. At that point Taxpayers A and B realized their mistake in not having recharacterized the IRA conversion.

As of the date of this request, to the best of Taxpayer A and B's knowledge, the Internal Revenue Service has not discovered Taxpayers' failure to make the election to recharacterize Roth IRA Y to a traditional IRA.

Based on the foregoing facts and representations, you have requested the following ruling: that, pursuant to sections 301-9100-1 and 301-9100-3 of the Regulations, Taxpayers A and B are granted a period not to exceed 60 days from the date of this ruling letter to make an election under section 1.408A-5 of the Regulations to recharacterize Taxpayer A's Roth IRA Y to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, Code section 408A(d)(6) 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 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, 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, of the Regulations 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.

Section 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) 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 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 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 temporary 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's 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 temporary 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.

Section 301.9100-3(c)(1)(i) of the Regulations indicates that the interests of the government are prejudiced if granting relief will result in a taxpayer (or taxpayers, if more than one taxpayer is affected by the tax consequences of the election) having a lower tax liability in the aggregate for all years to which the election applies than the taxpayer (or taxpayers, if more than one is affected) would have had if the election had been made on a timely basis.

When a taxpayer is unable to meet the requirements of section 301.9100-2 of the Regulations for an automatic extension of time to make an election, as is the case here, section 301.9100-3 indicates that relief will be granted if the taxpayer provides evidence establishing that: the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

In this case, Taxpayers A and B were ineligible to convert Taxpayer A's traditional IRA X to Roth IRA Y since their adjusted gross income exceeded $100,000. However, until they discovered otherwise, which discovery occurred after Taxpayer A "converted" IRA X to Roth IRA Y, Taxpayers A and B were unaware of the requirements of section 1.408A-5 of the Regulations. Taxpayers A and B filed this request for section 301.9100 relief after filing their joint 2001 Federal Income Tax Return. With respect to Taxpayers A and B, 2001 is not a "closed" tax year. Finally, prior to Taxpayer A's and B's filing this request for relief under sections 301.9100-1 and 301.9100-3, the Internal Revenue Service had not discovered Taxpayer A and B'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 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. In addition, we believe that granting relief will not prejudice the interests of the government. 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 an extension of 60 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 which may be applicable thereto.

In order to effectuate this letter ruling, Taxpayer A and B should file an amended Federal Income Tax Return (Form 1040X) if they have not already done so.

This ruling is based on the assumption that IRA X and Roth IRA Y meet the requirements Code sections 408 and 408A (where applicable), 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.

Should you have any questions concerning this letter ruling, please contact SE:T:EP:RA:T1, of my staff at .

Sincerely yours,

Manager, Employee Plans Technical Group 1

Enclosures:
Deleted Copy of the Ruling
Notice 437

200426024

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

MAR 31 2004

Legend:

Taxpayer A=

Amount B=

IRA C=

Bank D=

Bank E=

Brokerage Firm F=

Dear Taxpayer A:

This is in response to your letter dated , in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

On , Taxpayer A went to Bank E where he had established IRA C and other investments to redeem some of his maturing investments.

Taxpayer A wanted to make withdrawals from maturing Certificate of Deposits and to invest those funds in an investment product that offered him a higher rate of return. As part of this withdrawal, Taxpayer A received Amount B from IRA C. Taxpayer A invested Amount B and other funds that were also withdrawn by purchasing investment bonds while being assisted by Brokerage Firm F.

It was not until Taxpayer A received his Form 1099R showing Amount B as a taxable distribution that Taxpayer A realized that the maturing investment funds withdrawn as Amount B on , were funds from IRA C. The bank teller that issued the check for Amount B gave Taxpayer A no explanation or information about the distribution being from an IRA account and that Taxpayer A had a 60-day period to roll over Amount B into an IRA account to avoid any adverse tax consequences. Any effort to rectify the incorrect distribution from IRA C with Bank E was too late because the 60-day period allowed by the Code to avoid the tax liability had already expired.

Bank D acquired Bank E where IRA C had been established. On , Bank D wrote a letter where it admitted errors in terminating IRA C without explaining to Taxpayer A that the distribution of Amount B was from an IRA account and by not requesting him to complete an IRA disbursement form.

You represent that no other amount was distributed from IRA C within the one year period since the last distribution.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount B because the failure to waive such requirement would be against equity or good conscience.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by Taxpayer A demonstrates that he relied completely on Bank E's teller who handled his request of . Taxpayer A's trust in the correctness of the transaction involving the maturing investments by Bank E's employee prevented Taxpayer A from depositing Amount B into an IRA within the 60-day rollover period since the distribution. The failure to deposit Amount B into an IRA within the 60-day period was solely because of the lack of information from Bank E and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

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 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.

If you wish to inquire about this ruling, please contact , at . Please address all correspondence to .

Sincerely yours,

for Ada Perry

, Manager
Employee Plans Technical Group 4

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose