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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200213031

UIL No.: 9100.00-00

JAN 2 2002

T:EP:RA:T1

Legend :

Taxpayer A.....

Taxpayer B.....

IRA U.....

IRA V.....

Company M.....

Sum N.....

Dear :

This is in response to a letter dated July 26, 2001, as supplemented by correspondence dated November 29, 2001, and December 5, 2001, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). The following facts and representations were submitted in connection with your request.

Taxpayer A maintained IRA U, an individual retirement arrangement described in section 408 of the Internal Revenue Code (the "Code"), with Company M. Taxpayer A converted his traditional IRA U into Roth IRA V, effective in 1999, which is also maintained by Company M. The amount converted from traditional IRA U to Roth IRA V was Sum N. Taxpayer A and Taxpayer B, Taxpayer A's spouse, filed a joint federal income tax return for calendar year 1999. With respect to calendar year 1999, Taxpayer A's and Taxpayer B's modified adjusted gross income exceeded the limit found in section 408A(c)(3)(B).

Taxpayers A and B used a professional tax advisor in preparing their calendar year 1999 federal income tax return, and were not informed that Taxpayer A was not eligible for the Roth IRA conversion since their modified adjusted gross income exceeded the $100,000 limit. In April of 2001, it was pointed out by a new tax advisor to Taxpayer A and Taxpayer B that

225

Taxpayer A was not eligible for the 1999 conversion. At this time it was too late to recharacterize the conversion since it was past the due date, plus extensions, of Taxpayer A's and Taxpayer B's joint 1999 federal income tax return. This request for relief under section 301.9100-3 of the regulations was submitted prior to the Service's discovering Taxpayer A's ineligibility to convert IRA U into Roth IRA V and subsequent failure to timely elect to recharacterize Roth IRA V back to a traditional IRA.

Based on your submission and the above facts and representations, you request a ruling that pursuant to section 301.9100-3 of the regulations, Taxpayer A be granted an extension to recharacterize Roth IRA V back to a traditional IRA.

With respect to your ruling request, Code section 408A(d)(6) and section 1.408A-5 of the federal Income Tax Regulations (the "I.T. 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 originally 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, Q&A-6 of the I.T. Regulations 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 that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) 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 I.T. Regulations provides 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 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 (AGI) 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 regulations provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section

226

301.9100-1(c) provides that the Commissioner of Internal Revenue, 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 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 Internal Revenue Service (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.

In this case, Taxpayer A was not eligible to convert traditional IRA U into Roth IRA V since Taxpayer A's and Taxpayer B's combined modified adjusted gross income for 1999 exceeded $100,000. Taxpayers A and B filed their joint 1999 federal income tax return. Taxpayer A was unaware that he was ineligible for the Roth IRA conversion until the year 2001. Therefore, it is necessary to determine whether the taxpayers are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A was ineligible for the 1999 Roth IRA conversion, Taxpayer A was not so informed until advised by his current tax advisor in the year 2001. Upon realizing the

mistake, Taxpayers A and B requested relief from the Service before the Service discovered Taxpayer A's ineligibility to convert IRA U into Roth IRA V and failure to timely elect to recharacterize Roth IRA V back to a traditional IRA. The 1999 taxable year is not closed under the statute of limitations. Thus, Taxpayer A and Taxpayer B satisfy the requirements of clauses (i), (iii), and (v) of section 301.9100-3(b)(1) of the regulations. Accordingly, we rule that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed six months from the date of this ruling letter to recharacterize IRA V back to a traditional IRA.

This letter assumes that the above IRAs qualify under Code section 408 at all relevant times.

This letter is directed only to the taxpayers who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

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 regarding this ruling, please contact .

Sincerely yours,

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

cc:

Enclosures:
Deleted copy of ruling
Notice 437

228