TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224 200235033

JUN 12 2002

Uniform Issue List: 9100.00-00

T:EP:RA:T4

Legend:

Taxpayer A=

Individual B=

Firm C=

Individual D=

Individual E=

Firm F=

State S=

IRA X=

IRA Y=

Dear

This is in response to the January 7, 2002 letter, as supplemented by

correspondence dated May 28, 2002, and June 3, 2002, submitted by your authorized representative, 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. In April 2000, on the advice of her son, Individual B, a professional investment advisor, Taxpayer A converted IRA X, a traditional IRA account, to a Roth IRA account, IRA Y. Taxpayer A was qualified to make the conversion described above under Code section 408A.

Firm C had provided accounting services to Taxpayer A prior to 2001. Firm C would regularly send Taxpayer A reminders to file extensions, estimated taxes, and income tax returns from the time of her husband's death in up until 2001. Firm C had previously advised Taxpayer A via Individual B that she could recharacterize her conversion at any time prior to the due date of her income tax return.

After moving to State S, Taxpayer A switched accountants to Individual D, a certified public accountant in State S. In , Individual D provided Taxpayer A with Form 4868, Application for Automatic Extension of Time to File U.S. Individual Tax Return, for the extension of her income tax return. Individual B assisted Taxpayer A in filling out the extension form, which was filed timely.

It was Taxpayer A's intention to recharacterize her Roth IRA, IRA Y, to a traditional IRA before the deadline for the filing of her tax return, as evidenced by an email correspondence dated , from Individual B to Taxpayer A advising her that she would need to recharacterize a portion of IRA Y to a traditional IRA before the due date of her tax return.

Individual D never contacted Taxpayer A regarding a second request for extension to file her income tax return, and Taxpayer A had mistakenly believed that her original extension was valid until rather than . Taxpayer was out of the country until , and upon her return, contacted Individual D for the filing of her tax return. Individual D incorrectly informed Taxpayer A that , was the deadline for recharacterization of a Roth IRA into a traditional IRA for conversions done in , even though Taxpayer A had filed a valid extension until . Individual D also correctly advised Taxpayer A that the Form 4868 was valid only through t and then proceeded with the preparation of her income tax return.

Taxpayer A's 2000 Federal Income Tax Return was not timely filed.

Taxpayer A subsequently discovered that a recharacterization of her Roth IRA. IRA Y, could have been performed after A , but prior to if a valid second extension had been filed.

In Taxpayer A requested assistance from another family member, Individual E of Firm F, in order to find out if there was any way that she could still recharacterize her Roth IRA, IRA Y, to a traditional IRA. When Taxpayer A found out that section 9100 relief might be available, she immediately made arrangements to prepare and file the request for this ruling.

The account value of Taxpayer A's Roth IRA, IRA Y, has not declined significantly since the normal deadline for recharacterization applicable to amounts originally converted by Taxpayer A in 2000. For Taxpayer A, such deadline was 5, , since she validly filed an extension for filing her tax return to such date. As of the date of the original submission of this ruling request, the value of the account had not declined substantially and, in fact, as of , the value of such account was actually higher than the account value in with no additional amounts having been contributed to such account during such period.

As of the date of this ruling request, Taxpayer A had not recharacterized her Roth IRA, IRA Y, as 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 is granted a period not to exceed sixty (60) days from the date of this ruling letter to recharacterize her Roth IRA, IRA Y, as a traditional 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 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.

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(b)(3)(iii) of the regulations provides that a taxpayer will be

deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the Internal Revenue Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c)(1)(i) of the regulations provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability then if the election had been timely made.

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.

Taxpayer A did not timely file her Federal Income Tax Return and Taxpayer A did not elect to recharacterize her Roth IRA, IRA Y, as a traditional IRA on or before the date prescribed by law, including extensions, for filing the taxpayer's federal income tax return for the year of contribution. 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 did not timely recharacterize her original conversion because she was unaware that a second extension was necessary in order to take advantage of the l deadline instead of the deadline. However, the email correspondence from Taxpayer A's son and financial advisor, Individual B, to Taxpayer A clearly shows that it had been her intention to recharacterize the Roth IRA, IRA Y, as a traditional IRA, prior to the deadline for filing Taxpayer A's Federal Income Tax Return. Additionally, Taxpayer A is not using hindsight in requesting relief. Significantly, the account value of Taxpayer A's Roth IRA, IRA Y, had, in fact, recently risen above the level it was in , the deadline for recharacterizing the initial conversion in had it been done in a timely manner. Calendar year s not a "closed" tax year.

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 (iii) and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of sixty (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 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,

Alan C. Pipkin
Manager, Technical Group 4
Employee Plans