



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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U.I.L. 408.00-00

JUN 15 2004

SE.T:EP:RA:T2

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

Bank B =

Company P =

Employee E =

Dear

This is in response to your letter dated July 3, 2003, as supplemented by correspondence dated April 2, 2004, April 16, 2004, April 27, 2004, and May 18, 2004, submitted on your behalf by your authorized representative in which you request a ruling from the Internal Revenue Service ("Service") with respect to attempted conversions from traditional individual retirement arrangements ("IRA") to Roth IRAs for the 1998 tax year.

The following facts and representations have been made in support of your ruling request.

Taxpayer A and Taxpayer B maintained traditional IRA X and traditional IRA Y, respectively, with Bank B. IRA X and IRA Y were established in _____ with distributions of cash and stock. Taxpayer A and Taxpayer B received from qualified retirement plans. Bank B subsequently determined that it could not hold the stock because of a relationship it shared with Company P. Taxpayer A and Taxpayer B agreed to allow Company P to establish new traditional IRAs for them to hold the cash and stock. You represent that it was Taxpayer A and Taxpayer B's intent to then have these newly established Company P traditional IRAs converted to Roth IRAs also with Company P.

On _____, Taxpayer A and Taxpayer B represent that they signed the necessary documentation with Company P to establish traditional IRAs. Taxpayer A and Taxpayer B further state that the necessary paper work was completed to convert these newly established traditional IRAs to Roth IRAs and that this request was made in a timely fashion during tax year _____.

On _____, Employee E, an employee of Taxpayer A and Taxpayer B, contacted Company P to verify that the traditional IRAs Taxpayer A and Taxpayer B established on _____ had been converted to Roth IRAs. Company P informed Employee E that it could not locate Taxpayer A and Taxpayer B's paperwork and that IRA accounts had not been established for Taxpayer A and Taxpayer B.

On _____, Employee E completed new Company P IRA application forms to establish new traditional IRAs and Roth IRAs for Taxpayer A and Taxpayer B. Taxpayer A and Taxpayer B signed the new traditional IRA application forms on _____. Taxpayer A signed his Roth IRA conversion form on _____ and Taxpayer B signed her Roth IRA conversion form on _____. Taxpayer A and Taxpayer B then signed distribution forms to transfer the cash and stock from traditional IRAs to Roth IRAs or _____.

In _____, Employee E contacted Company P to ascertain the status of Taxpayer A and Taxpayer B's IRA conversions. Employee E was informed by Company P that a transfer of funds from Bank B to Company P was made on _____.

On _____, Taxpayer A and Taxpayer B's accountant requested a copy of their IRA statements. Employee E's review of these statements revealed that they were not for Roth IRAs. On _____,

Employee E contacted Company P to ascertain the status of Taxpayer A and Taxpayer B's IRA conversions and was informed that the IRA conversions had not been made. On or about _____, Company P informed Employee E that it had found the original distribution forms Taxpayer A and Taxpayer B completed in _____ that authorized the conversion of two traditional IRAs to Roth IRAs. Company P has acknowledged its error in not converting Taxpayer A and Taxpayer B's traditional IRAs to Roth IRAs as instructed by Taxpayer A and Taxpayer B.

Taxpayer A and Taxpayer B state that they did not timely file their federal income tax return for tax year due to circumstances beyond their control, and that their adjusted gross income for tax year was less than \$100,000. The IRA conversions were not reported on the tax return. Taxpayer A and Taxpayer B further assert that their modified adjusted gross income in subsequent tax years has been more than \$100,000 and consequently they have been unable to convert their traditional IRAs to Roth IRAs. Taxpayer A and Taxpayer B believe that they should be allowed to treat the conversions as having taken place in even though Company P failed to follow their instructions to convert their traditional IRAs to Roth IRAs. Taxpayer A and Taxpayer B's IRAs maintained with Company P continue to be designated as traditional IRAs.

Based on the foregoing facts and representations, you request that the Service deem that the IRA conversions you attempted to make in constitute "qualified rollover contributions" from traditional IRAs to Roth IRAs under section 408A(c)(3)(B) of the Internal Revenue Code ("Code").

Section 408A was added to the Code by section 302 of the Taxpayer Relief Act of 1997, Pub. L. 105-34, effective for tax years beginning after December 31, 1997. This section created Roth IRAs as a new type of nondeductible individual retirement arrangement. Code section 408A(b) of the Code provides that the term "Roth IRA" means an individual retirement plan which is designated at the time of establishment of the plan as a Roth IRA. Roth IRAs, except as specifically provided in Code section 408A, are subject to the same rules that apply to traditional IRAs.

Code section 408A(c)(3)(B) of the Code provides that an individual shall not be allowed to make a qualified rollover contribution to a Roth IRA from an IRA other than a Roth IRA during any taxable year if, for the taxable year of the distribution to which such contribution relates—

- (i) the taxpayer's adjusted gross income exceeds \$100,000, or
- (ii) the taxpayer is a married individual filing a separate return.

Q&A-1(a) of section 1.408A-4 of the Income Tax Regulations (regulations) provides, in part, that an individual can convert an amount in his or her traditional IRA to a Roth IRA if two requirements are satisfied. First, the IRA owner must satisfy the modified adjusted gross income limitation described in A-2(a) and, if married, the joint filing requirement described in A-2(b). Second, the amount contributed to the Roth IRA must satisfy the definition of a qualified rollover contribution in section 408A(e) (i.e., it must satisfy the requirements for a rollover contribution as defined in Code section 408(d)(3), except that the one-rollover-per-year limitation in section 408(d)(3)(B) does not apply).

Q&A-1(b) of section 408A-4 of the regulations provides, in part, that an amount can be converted from a traditional IRA to a Roth IRA by any of three methods—

- (1) An amount distributed from a traditional IRA is contributed (rolled over) to a Roth IRA within the 60-day period described in section 408(d)(3)(A)(i);
- (2) An amount in a traditional IRA is transferred in a trustee-to-trustee transfer from the trustee of the traditional IRA to the trustee of the Roth IRA; or
- (3) An amount in a traditional IRA is transferred to a Roth IRA maintained by the same trustee. For purposes of sections 408 and 408A, redesignating a traditional IRA as a Roth IRA is treated as a transfer of the entire account balance from a traditional IRA to a Roth IRA.

Under limited circumstances the Service has the authority to waive certain requirements where the failure to do so would be against equity and good conscience. For example, under Code section 408(d)(3)(I), the Service has the authority to waive the 60-day rollover requirement where, among other things, a rollover was not completed within 60 days because of an error committed by a financial institution. The waiver of the 60-day rollover requirement is effective for distributions that occur after December 31, 2001.

Further, under section 301.9100-1(c) of the Procedure and Administration Regulations ("Regulations"), the Commissioner of the Service, in his discretion, may grant a reasonable extension of 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 provided the grant for relief will not prejudice the interests of the government. Section 301.91103(c) of the Regulations provides that ordinarily the interests of the government will not 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 the relief under this section or if granting relief would result in a taxpayer having a lower tax liability. Taxpayers who subsequently discovered that they were ineligible to convert traditional IRAs to Roth IRAs have been granted relief under section 301.9100-3 of the Regulations to recharacterize Roth IRAs as traditional IRAs, provided they meet the requirements of section 301.9100-1 and section 301.9100-3 of the Regulations and further provided that the tax year for which the relief is requested is not a closed tax year.

In this case, you represent that traditional IRAs were in fact established for you with Company P in You further represent that you completed the necessary documentation in 1998 to convert your traditional IRAs to Roth IRAs,

also with Company P, but that Company P failed to follow your instructions and the IRA conversions never took place. You assert that your modified adjusted gross income for tax year did not exceed \$100,000. You further assert that your modified adjusted gross income has not been less than \$100,000 in subsequent tax years to allow you to convert your traditional IRAs to Roth IRAs.

From the information submitted, it appears that you attempted to convert your traditional IRAs to Roth IRAs pursuant to method three of Q&A-1(b) of section 1.408A-4 of the regulations by having amounts in your Company P traditional IRAs transferred to Company P Roth IRAs. Under this method, for purposes of Code section 408 and Code section 408A, redesignating a traditional IRA as a Roth IRA is treated as a transfer of the entire account balance from a traditional IRA to a Roth IRA provided that both IRAs are maintained by the same trustee.

The IRAs that you represent were established with Company P in are traditional IRAs and are subject to the rules of Code section 408(a). A Roth IRA must be designated as a Roth IRA at the time it is established and must comply with the rules under Code section 408A. No provision of the Code or regulations would permit the Service to subsequently designate a trust established under Code section 408(a) as meeting the requirements of Code section 408A.

Taxpayer A and Taxpayer B did not report the IRA conversions on their income tax return and therefore did not satisfy the conditions for relief under section 301.9100-1 of the Regulations. Under the principles of section 301.9100-1 of the Regulations, the grant of relief cannot prejudice the interest of the government. However, the interest of the government is prejudiced if you are allowed to treat the IRA conversions as having been made when the tax year for which the conversions should have been reported in income is a closed year. In other words, to allow Taxpayer A and Taxpayer B to deem the IRA conversions as having occurred in calendar year would allow them to avoid the income tax consequences associated with IRA conversions because the tax year is a closed year (i.e., the return for that year cannot be amended to reflect the inclusion of the IRA conversions in gross income, and the payment of the additional income taxes that would be due on such converted amounts).

Accordingly, we conclude, that since Company P failed to transfer or designate your traditional IRAs as Roth IRAs in amounts in your traditional IRAs were not converted to Roth IRAs in accordance with Q&A-1(b) of section 408A-4 of the regulations. Thus, the traditional IRA conversions you attempted to make in tax year 1998 do not constitute qualified rollover contributions to Roth IRAs under Code section 408A(c)(3)(B).

No opinion is expressed as to the tax consequences of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is based on the assumptions that the IRAs established by Taxpayer A and Taxpayer B meet the requirements of Code section 408(a).

This ruling 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.

Pursuant to a power of attorney (Form 2848) on file in this office, a copy of this letter has been sent to your authorized representative.

If you have any questions concerning this ruling, please contact

*****SE:T:EP:RA:T2*****.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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Notice of Intention to Disclose