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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 03 2008

T:EP:RA:TL

Uniform Issue List Number: 9100.00-00

Legend:

- Taxpayer A = *****
- Taxpayer B = *****
- Custodian C = *****
- Enrolled Agent D = *****
- IRA X = *****
- IRA Y = *****
- Amount 1 = *****
- Amount 2 = *****

Dear *****:

This is in response to a letter dated November 9, 2006, submitted by your authorized representative on your behalf, as supplemented by additional correspondence dated July 6, 2007, in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("regulations").

In support of your request for relief you have submitted the following facts and representations:

Taxpayers A and B ("Taxpayers") are spouses who filed a joint Federal Income Tax Return for calendar year . Enrolled Agent D has prepared the Taxpayers' returns for a number of years, including . The time for filing the Taxpayers' return was extended to August 15, 2005.

During , Enrolled Agent D advised Taxpayer A to convert Amount 1 from a traditional individual retirement arrangement ("IRA") Y, to IRA X, a Roth IRA. Taxpayer A maintains both IRA X and IRA Y with Custodian C. However, Taxpayers A and B had modified adjusted gross income ("AGI") of Amount 2 for , which represents the declared adjusted gross income less the conversion amount. Amount 2 exceeds the \$100,000 maximum permissible modified AGI for a taxable year during which a taxpayer may transfer assets from a traditional IRA to a Roth IRA.

Enrolled Agent D has filed an affidavit stating that he advised Taxpayer A to convert Amount 1 from traditional IRA Y to Roth IRA X during . Enrolled Agent D further states that he was unaware at the time that taxpayers with modified AGI in excess of \$100,000 were not eligible for such a conversion. Enrolled Agent D also represents that the Taxpayers are unfamiliar with the tax laws and rely upon him for advice and preparation of their Federal Income Tax Returns. Upon preparing the Taxpayers' return in October , Enrolled Agent D learned of the \$100,000 modified AGI limit on conversions and proceeded to submit this request for relief under section 301.9100-3 of the regulations. Calendar year is not a "closed" tax year.

Based on the facts and representations provided above, Taxpayer A requests a ruling that, pursuant to section 301.9100-3 of the regulations, he be granted a period not to exceed 90 days from the date of issuance of this ruling letter to complete an election under section 1.408A-5 of the federal Income Tax Regulations ("I.T. Regs.") to recharacterize the Roth IRA X to 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 ("Code") and section 1.408A-5 of the I.T. Regs. 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, Q and A -6 of the I.T. Regs. describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that either has been contributed to a Roth IRA or 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 specific 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 modified AGI 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 arrangement other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2 of the I.T. Regs. provides, in summary, that an individual with modified AGI in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Furthermore, Q&A-2(b) provides that a husband and wife must file a joint Federal Income Tax Return to convert an amount to a Roth IRA, and the modified 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.

Section 1.408A-5, Q&A-2(a) of the I.T. Regs. provides guidance with respect to the calculation of income attributable to recharacterized amounts. (See also §1.408-4(c)(2)(ii) of the I.T. Regs.)

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the 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 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 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 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 ineligible to convert his traditional IRA Y to Roth IRA X in because the Taxpayers' modified AGI exceeded the \$100,000 limit specified in section 408A(c)(3)(B) of the Code. However, at the time of the conversion, Taxpayers A and B believed that Amount 1 of Taxpayer A's traditional IRA Y could properly be converted to Roth IRA X because they had been advised by Enrolled Agent D to

complete such a conversion, and they reasonably believed they could rely on Enrolled Agent D's tax advice in this matter. Enrolled Agent D filed this request for section 301.9100 relief shortly after filing the Taxpayers' Federal Income Tax Return. It was at this time that Enrolled Agent D first learned that Taxpayer A was ineligible in to convert Amount 1 of traditional IRA Y to Roth IRA X. Additionally, the taxable year to which this request pertains has not been closed by the statute of limitations; and the Service did not discover Taxpayer A's ineligibility to convert Amount 1 of traditional IRA Y to Roth IRA X and his failure to make a timely election to recharacterize the failed conversion prior to his filing of this letter ruling request.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, you have met the requirements of sections 301.9100-1 and 301.9100-3 of the regulations, and that you have acted reasonably and in good faith with respect to making the election to recharacterize your failed conversion as a traditional IRA. 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 a period of 60 days from the date of the issuance of this letter ruling to recharacterize Amount 1, plus earnings thereon, of Roth IRA X as a traditional IRA.

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 ruling is based on the assumption that Traditional IRA Y and Roth IRA X meet the requirements of Code sections 408 and 408A, 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.

The original of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions pertaining to the ruling, please contact *****

SE:T:EP:RA:T1 ***** for further information.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted Copy of Ruling Letter
- ▶ Notice of Intention to Disclose (Notice 437)
- ▶ Copy of Cover Letter to Authorized Representative