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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEC 16 2014

U.I.L. 9100.00-00, 408A.00-00

T:EP:RA:T3

Legend:

Taxpayer A =

Taxpayer B =

Tax Preparer E =

Company D =

Roth IRA X =

Roth IRA XX =

Roth IRA XXX =

Roth IRA Y =

Roth IRA YY =

Dear :

This is in response to your letter dated October 11, 2013, as supplemented by a letter dated November 20, 2013, and an email dated December 15, 2014, submitted on your behalf, by your authorized representative, in which you request a ruling under section

408A of the Internal Revenue Code (Code) and under section 301.9100-3 of the Procedure and Administration Regulations (Regulations).

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

Taxpayer A and Taxpayer B, (referred to collectively as "Taxpayers") are married and file joint returns. Taxpayer A established Roth IRA X, Roth IRA XX and Roth IRA XXX and Taxpayer B established Roth IRA Y and Roth IRA YY in March 1999 with Company D. Taxpayer A represents that he is the title holder of Roth IRA X, Roth IRA XX and Roth IRA XXX. Taxpayer B represents that she is the title holder of Roth IRA Y and Roth IRA YY. The Taxpayers' initial contributions to the Roth IRAs were allocated to the 1999 tax year. Taxpayer A and Taxpayer B made monthly contributions to the Roth IRAs from 1999 through 2012. In March of 2013, Taxpayer A and Taxpayer B met with a CPA to develop a comprehensive retirement plan. The CPA determined that from 2006 through 2012 the Taxpayers had income over the limits for Roth IRA contributions and in 2005 their contribution exceeded the phased out Roth IRA annual contribution limit. The Taxpayers had never been informed of any income limitations for contributing to Roth IRAs by Tax Return Preparer E who had prepared their returns from 1999 through 2012. Acting on the advice of their CPA, the Taxpayers timely recharacterized their 2012 Roth IRA contributions as contributions to traditional IRAs by transfers to traditional IRA accounts with Company D.

Taxpayer A and Taxpayer B did not discover that there were problems with their eligibility to contribute to a Roth IRA until after the deadline for making timely recharacterizations for 2011 through 2012, as prescribed in section 408A(d)(6) of the Code. The Taxpayers were advised by their attorney to request a ruling for an extension of time to recharacterize the contributions to Roth IRAs as contributions to a traditional IRA for 2011 through 2012. The Taxpayers did not request to amend previously filed tax returns for tax years 2011 to 2012 to claim a deduction for contributions to traditional IRAs. The assets have never left the Roth IRAs.

The Internal Revenue Service (Service) has not independently discovered Taxpayer A's and Taxpayer B's failure to make a timely recharacterization.

Based on the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayer A and Taxpayer B be granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contributions for tax years 2011 to 2012 to Roth IRA X, Roth IRA XX, Roth IRA XXX, Roth IRA Y and Roth IRA YY as contributions to a traditional IRAs.

With respect to your ruling request, section 408A(d)(6) of the Code and section 1.408A-5 of the Federal Income Tax Regulations (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. 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.

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 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 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)(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.

Section 301.9100-(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 the present case the taxpayers did not become aware of the fact that their income for the tax years 2000 through 2001 exceeded the level at which contributions to Roth IRAs are permitted until after the deadlines for making timely recharacterizations had passed. Therefore, the Taxpayers were unaware of the necessity of making the election. Further the Taxpayers represent that they relied upon Tax Preparer E to advise them regarding their ability to make Roth IRA contributions, and Tax Preparer E did not inform them about the income limits or raise the fact that the Taxpayers' income had exceeded the limits. Upon realizing the need to make the election, Taxpayer A and Taxpayer B, in a timely manner, and before the Service discovered the failure to make the election, submitted this request for relief under section 301.9100-3.

Under the set of circumstances described above, Taxpayer A and Taxpayer B satisfy the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i) and (v). In addition, although the statute of limitations is closed for most of the years involved, the taxpayers are not seeking relief to file amended returns for closed years and granting relief will not result in the taxpayers having a lower tax liability in the aggregate for all taxable years affected by the election than they would have had if the election had been timely made, we find that under section 301.9100-3(c)(1) of the Regulations, granting relief will not prejudice the interests of the Government.

Accordingly, Taxpayer A and Taxpayer B are granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the contributions to Roth IRA X, Roth IRA XX, Roth IRA XXX, Roth IRA Y and Roth IRA YY as contributions to traditional IRAs.

This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A 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.

A copy of this letter has been sent to your authorized representative in accordance with your authorization on file in this office.

If you wish to inquire about this ruling, please contact \_\_\_\_\_, I.D. # \_\_\_\_\_, at ( ) -

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose

cc: