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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 9100.00-00; 408A.00-00

DEC - 6 2006

S:E:T:EP:RA:TY

Legend:

Taxpayer A =

Taxpayer B =

Firm C =

Roth IRA X =

Roth IRA Y =

Amount M =

Date 1 =

Dear

This is in response to your request dated October 28, 2005, as supplemented by correspondence dated November 21, 2006, in which your authorized representative, on your behalf, requests relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations (the "Regulations"). The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

In 2003, Taxpayer A and Taxpayer B (the "Taxpayers"), who file a joint return, each made a contribution of Amount M to Roth IRA X and Roth IRA Y respectively. Firm C is the custodian of the Roth IRA accounts. The Taxpayers were not aware at the time of the contributions that their calendar year 2003 joint modified adjusted gross income exceeded the \$160,000 income limitation on making such contributions. In 2004, the Taxpayers again made contributions of Amount M to their respective Roth IRAs. During preparation of their 2004 Federal Income Tax Return, it was determined that, as a result of the fact that the Taxpayers had modified adjusted gross income of more than \$160,000 for 2004, the Roth IRA contributions were not permitted for 2004.

The Taxpayers then timely recharacterized the 2004 contributions as traditional, nondeductible IRA contributions.

The action related to the Taxpayers' 2004 Federal Income Tax Return caused the Taxpayers to review their 2003 Federal Income Tax Return, whereupon they discovered that although they had reported making nondeductible contributions to traditional IRAs, in fact, the contributions had been Roth IRA contributions and had been identified as such by Firm C, even though the Taxpayers' modified adjusted gross income for 2003 exceeded the \$160,000 limit and the Roth IRA contributions were not permitted. When the Taxpayers discovered this error and tried to correct it with Firm C, the time for making recharacterization elections for contributions made in 2003 had passed.

As of the date of the request, to the best of the Taxpayers' knowledge, the Internal Revenue Service had not discovered their failures to make the elections to recharacterize the 2003 Roth IRA contributions as traditional nondeductible IRA contributions.

Based on the foregoing facts and representations, your authorized representative has requested a ruling that, pursuant to sections 301.9100-1 and 301.9100-3 of the Regulations, Taxpayer A and Taxpayer B may each be granted a period not to exceed 60 days as measured from the date of issuance of this ruling to make an election under section 1.408A-5 of the Income Tax Regulations (the "I.T. Regulations") to recharacterize Roth IRA X and Roth IRA Y as traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408A(d)(6) of the Internal Revenue Code (the "Code") and section 1.408A-5 of 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 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, 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.

Section 408A(c)(3) of the Code provides, in relevant part, that an individual filing a joint return with modified adjusted gross income in excess of \$160,000 for a taxable year is not permitted to make a contribution to a Roth IRA in that taxable year.

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) 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)(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.

The information presented and documentation submitted on behalf of the Taxpayers is consistent with their assertion that their failure to elect to recharacterize the Roth IRAs on or before the date prescribed by law, including extensions, for filing

their Federal Income Tax Return for the year of contribution, was caused by their lack of awareness of the necessity of making an election.

Based on the above, Taxpayers A and B meet the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i) and (iii), for the 2003 tax year. Therefore, Taxpayer A and Taxpayer B are each granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize his or her calendar year 2003 contribution to the respective Roth IRA as a nondeductible contribution to 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 directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with the Service, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact () - . (ID # -) at () - . Please address all correspondence to SE:T:EP:RA:T4 .

Sincerely yours,

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Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 4

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose, Notice 437