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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

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T: EP: RAT3

Legend:

Taxpayer A =
Broker M =
IRA X =
Roth IRA Y =
IRA Custodian P =
Amount D =
CPA K =
Amount F =

Dear :

This is in response to a letter dated October 9, 2007, as supplemented by a letter dated December 17, 2007, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). You submitted the following facts and representations in connection with your request.

Taxpayer A is retired. Taxpayer A maintained IRA X, a traditional individual retirement arrangement ("IRA") as described in section 408 of the Internal Revenue Code, ("Code"), with IRA Custodian P.

Relying on the advice of Broker M, Taxpayer A transferred the entire balance of IRA X, Amount D, to a newly opened Roth IRA Y, also maintained with IRA Custodian P, on June 2, 2005. Broker M made this recommendation to transfer Amount D from IRA X to Roth IRA Y without having knowledge of Taxpayer A's income for 2005. Taxpayer A's adjusted gross income for calendar year 2005 exceeded \$100,000 and consequently Taxpayer A was not permitted to make a qualified rollover contribution to Roth IRA Y.

In March 2006 while preparing Taxpayer A's calendar year 2005 federal income tax return, CPA K discovered a Form 1099R which reflected the distribution of Amount D from IRA X. On the advice of CPA K Taxpayer A contacted Broker M

and requested that the rollover contribution from IRA X to Roth IRA Y be reversed.

Broker M dictated a letter for Taxpayer A to sign and send back to Broker M which letter authorized Broker M to reverse the rollover to Roth IRA Y. Taxpayer A immediately complied and returned by way of a fax transmission the signed letter of authorization dated April 11, 2006 to Broker M. However, Broker M's receiving fax machine deleted the fax transmission of the April 11, 2006 authorization and consequently Broker M failed to instruct IRA Custodian P to timely recharacterize the June 2, 2005 rollover to Roth IRA Y. Therefore, Broker M never instructed IRA Custodian P to arrange a recharacterization of the June 2, 2005, rollover as intended by Taxpayer A. Taxpayer A, believing that the recharacterization of Roth IRA Y had been completed, did not learn of the failure of Broker M until 2007 when Taxpayer A received notice from the Internal Revenue Service ("Service") that he was not eligible to convert IRA X to Roth IRA Y.

As shown on Taxpayer A's Federal Form 1040, U.S. Individual Income Tax Return, filed with respect to calendar year 2005, Taxpayer A's 2005 adjusted gross income was Amount F which exceeded the limit found in Code sections 408A(c)(3)(A) and 408A(c)(3)(C)(ii). The return was timely filed, including extensions, on or about October 15, 2006. CPA K prepared the year 2005 return with the belief that the above referred rollover to Roth IRA Y was reversed.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA Y as a traditional IRA

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

Section 1.408A-5, Question & Answer-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.

Code section 408A(c)(3)(B) provides that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) 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 plan other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2, of the I.T. Regulations provides that an individual with modified adjusted gross income in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Section 1.408A-4, Q&A-2 further provides that an individual and his spouse must file a joint Federal Tax Return to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income (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.

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 Internal Revenue Service (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.

Taxpayer A's ruling request requires the Internal Revenue Service to determine whether he is eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A was ineligible to convert his IRA X to Roth IRA Y in 2005, he was unaware of this until the year 2006. Upon realizing his mistake, Taxpayer A, in a timely manner, directed Broker M to correct the error and to recharacterize his Roth IRA Y rollover contribution. However, Broker M failed to act as directed. Taxpayer A, believing that the recharacterization of Roth IRA Y had been completed, did not learn of the failure of Broker M until 2007 when Taxpayer A received notice from the Service that he was not eligible to convert IRA X to Roth IRA Y. Taxpayer A subsequently submitted this request for relief under section 301.9100 to the Service.

Under the set of circumstances described above, we believe Taxpayer A meets the requirements of clauses (ii) and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, Taxpayer A is granted an extension of 60 days as measured from the date of issuance of this ruling letter to recharacterize his calendar year 2005 contribution to Roth IRA Y to a traditional IRA.

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 taxpayer 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 a Power of Attorney on file in this office.

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If you wish to inquire about this ruling, please contact.

Please address all correspondence to

SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose