

200840055



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 08 2008

Uniform List Number 9100.00-00; 408A.00-00

T:EP:T:EP:RA

XXXXX
XXXXX
XXXXX

LEGEND:

- Taxpayer A = XXXXX
- Taxpayer B = XXXXX
- Advisor C = XXXXX
- IRA X = XXXXX
- Roth IRA Y = XXXXX
- Roth IRA Z = XXXXX
- Bank M = XXXXX
- Corporation N = XXXXX
- Company O = XXXXX
- Financial Institution P = XXXXX
- Amount S = XXXXX

XXXXX

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Dear XXXXX:

This is in response to a letter dated March 1, 2007, as supplemented by correspondence dated October 1 and November 9, 2007, and February 8 and February 18, 2008, submitted by your authorized representative, requesting relief under section 301.9100-3 of the Procedure and Administration Regulations ("Regulations"). Such relief is requested regarding the recharacterization of an amount rolled over to a Roth individual retirement arrangement (IRA) for a taxable year in which the taxpayer was ineligible to contribute to a Roth IRA.

The following facts and representations in support of your request have been made under penalties of perjury.

Taxpayer A and Taxpayer B (hereinafter referred to as "the Taxpayers") are a married couple. They file Form 1040, U.S. Individual Income Tax Return, jointly. In December 2005, Taxpayer A owned IRA X, a traditional individual retirement arrangement described in section 408(a) of the Internal Revenue Code ("Code") and maintained by Bank M. On December 30, 2005, Bank M, at Taxpayer A's request, transferred Amount S from IRA X to Roth IRA Y, a Roth individual retirement arrangement described in section 408A of the Code.

The Taxpayers own a percent business interest in Corporation N, a Subchapter S corporation. In 2005, the Taxpayers made contributions to Corporation N. For the 2005 taxable year, Corporation N sustained a net operating loss, as a result of which, Taxpayers expected to have a net operating loss on their Federal Income Tax Return and expected to be eligible to convert IRA X to a Roth IRA. Also in 2005, Taxpayer A held an interest in Company O, a limited partnership. In March 2006, Taxpayer A received a Schedule K-1 (IRS Form 1065, Partner's Share of Income, Deductions, Credits, etc.) from Company O showing a significant Section 1231 gain as described in section 1231 of the Code for the 2005 taxable year.

It was upon Taxpayer A's receipt of the Schedule K-1 that the Taxpayers first became aware of the magnitude of Company O's Section 1231 gain. The income reported on the Schedule K-1 caused the Taxpayers' modified adjusted gross income for the 2005 taxable year to be in excess of \$100,000, thereby making Taxpayer A ineligible to convert the traditional IRA to a Roth IRA for 2005.

The Taxpayers, assisted by Advisor C, requested an extension to file their 2005 tax return. Extension payments were made timely. Advisor C represents under oath that she informed the Taxpayers at the time that their 2005 Federal Tax Return was prepared that Taxpayer A must transfer the Roth IRA Y funds back to a traditional IRA because the Taxpayers' modified adjusted gross income for the 2005 taxable year was in excess of \$100,000. Advisor C further states, under oath, that she neglected to inform the Taxpayers that the transfer had to be

completed before October 16, 2006, the due date of their 2005 Federal Income Tax Return.

The Taxpayers delivered their tax documents to Advisor C who processed and filed the Taxpayers' 2005 tax return by (Monday) October 16, 2006. It is represented that on October 16, 2006, Advisor C was under the assumption that Taxpayer A had already recharacterized Roth IRA Y. It is further represented that on October 16, 2006, the Taxpayers were under the assumption that the deadline for recharacterizing Roth IRA Y was December 31, 2006, and that, because of such assumption, did not take the necessary action by October 16, 2006, the due date for filing their 2005 tax return.

In December 2006, Taxpayer A attempted to transfer the Roth IRA Y funds back into a traditional IRA account. Bank M, aware of IRS regulations, refused to make the transfer. The Taxpayers' request for relief under section 301.9100 of the Regulations was filed shortly after discovering that they had missed the deadline to recharacterize Roth IRA Y back to a traditional IRA and prior to the Service discovering that Taxpayer A had not timely elected to recharacterize Roth IRA Y to a traditional IRA. On February 28, 2006, Roth IRA Y was closed and the funds were transferred to Roth IRA Z maintained at Financial Institution P. The statute of limitations with respect to the Taxpayers' 2005 Federal Income Tax Return remains open.

Based on the above facts and representations, the Taxpayers request, pursuant to sections 301.9100-1 and 301.9100-3 of the Regulations, an extension of time, not to exceed 60 days from the date of this letter, to make an election under section 1.408A-5 of the Income Tax Regulations ("I.T. Regulations") to recharacterize Taxpayer A's Roth IRA as a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408A(d)(6) of 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) of the Code and section 1.408A-5 of the I.T. Regulations, 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 and section 1.408A-4, Q&A-2 of the I.T. Regulations provide, in relevant part, that an individual with adjusted gross income 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, further provides, in summary, that a married individual must file a joint return in order to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income subject to the \$100,000 limit for the taxable year is the modified adjusted gross income 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 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 of the Regulations 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 upon 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 by the Taxpayers is consistent with their assertion that Taxpayer A's failure to timely recharacterize the Roth IRA was caused by his reliance on the advice of Advisor C, who failed to inform him of the deadline for making the election.

Taxpayer A maintained traditional IRA X which he converted to Roth IRA Y on December 30, 2005. At the time of the conversion, the Taxpayers believed their modified adjusted gross income would be less than \$100,000. However, the Taxpayers' modified adjusted gross income for the 2005 taxable year exceeded \$100,000.00, thus making them ineligible to convert the traditional IRA to a Roth IRA.

The Taxpayers had their joint 2005 Federal Income Tax return, with extension, prepared and filed by Advisor C who failed to advise the Taxpayers that Taxpayer A had to recharacterize his Roth IRA back to a traditional IRA, by October 16, 2006. Due to the failure of Advisor C to advise the Taxpayers of the deadline for completing the recharacterization, the Taxpayers did not attempt to recharacterize Roth IRA Y until after the deadline had passed.

Therefore, based on the information submitted and the representations contained therein, we conclude that the requirements of section 301.9100-1 and 301.9100-3 of the Regulations have been met, and that Taxpayer A did act reasonably and in good faith with respect to making the election to recharacterize Roth IRA Y back to a traditional IRA. Specifically, the Service has concluded that Taxpayer A has met the requirements of clauses (i) and (v) of section 301.9100-3(b)(1) of the Regulations. In addition, since the statute of limitations is still open, under section 301.9100-3(c)(1)(ii) of the Regulations, giving relief will not prejudice the interest of the Government. Accordingly, Taxpayer A is granted an extension of 60 days from the date of this ruling letter to recharacterize the funds that were transferred to Roth IRA Y and which, as further transferred, are now in Roth IRA Z, as a contribution to a traditional IRA.

This ruling assumes that the above IRAs qualify under section 408 of the Code at all relevant times.

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 taxpayers 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 this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any question regarding this ruling, please contact XXXXX, ID Number XXXXX, SE:T:EP:RA:T4 at () - XXXX.

Sincerely



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose, Notice 437

cc: XXXXX
XXXXX
XXXXX
XXXXX