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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV 12 2008

UIL No. 9100.00-00; 408A.00-00

Legend:

Taxpayer A =

Custodian M =

Amount A =

Year 1 =

Year 2 =

IRA X =

IRA Y =

Dear:

This is in response to your letter dated \*\*\*, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "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 Taxpayer A was ineligible to contribute to a Roth IRA. The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A owns IRA X, a Simplified Employee Pension Plan described in section 408(k) of the Internal Revenue Code (the "Code"), and maintained by Custodian M. On December 29 of Year 1, Custodian M, at Taxpayer A's request, transferred Amount A from IRA X to IRA Y, a Roth IRA described in section 408A of the Code, as a partial Roth IRA conversion.

Taxpayer A represents that he consulted with his professional advisor about the partial conversion of Amount A from IRA X to IRA Y. His professional advisor erroneously informed him that the modified adjusted gross income ("MAGI") limit for conversions did not include capital gain income. Believing that his income was below such MAGI limit for conversions under section 408A(c)(3)(B), Taxpayer A made the partial conversion from IRA X to Roth IRA Y.

Taxpayer A represents further that he intended to include Amount A in income on his Form 1040, U.S. Individual Income Tax Return, for tax Year 1, and pay any applicable Federal income tax. Taxpayer A timely filed Form 4868, Application for Automatic Extension of Time to File U.S. Individual Tax Return, for tax Year 1. On October 15, of tax Year 2, while completing Form 1040 for tax Year 1, Taxpayer A discovered that he was ineligible for the conversion because his MAGI exceeded \$100,000 in Year 1. On October 22, of tax Year 2, Taxpayer A attempted to transfer the converted funds back into IRA X. Custodian M, aware of IRS regulations, refused to make the transfer. Taxpayer A was then informed by his professional advisor that he had until the end of calendar Year 1 to recharacterize the conversion.

Taxpayer A's 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 IRA X, and prior to the Internal Revenue Service (the "Service") discovering that Taxpayer A had not timely elected to recharacterize Roth IRA Y to a traditional IRA. The statute of limitations on Taxpayer A's Federal Income Tax Return for Year 1 remains open.

Based on the foregoing facts and representations, you have requested a ruling pursuant to section 301.9100-3 of the Regulations, that the Service grant you an extension of time to make the election under section 1.408A-5 of the Income Tax Regulations (the "I.T. Regulations") to recharacterize Amount A as a contribution back to IRA X.

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 408A(d)(3)(C) provides that a conversion of a traditional IRA to a Roth IRA is treated as a rollover from the traditional IRA to the Roth IRA.

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 by Taxpayer A is consistent with his assertion that his failure to elect to recharacterize the Roth IRA on or before the date prescribed by law, including extensions, for filing his Federal Income Tax Return for the year of contribution, was caused by his lack of awareness of his ineligibility to contribute Amount A to Roth IRA Y and therefore the necessity of his making an election to recharacterize the contribution. Taxpayer A filed this request for section 301.9100 relief shortly after discovering that he was ineligible to make the conversion and before the Service discovered his failure to make a timely election to recharacterize the failed conversion.

Thus, based on the information and the representations submitted by Taxpayer A, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have been met, and Taxpayer A acted reasonably and in good faith with respect to requesting an extension of time to recharacterize Amount A as a contribution to IRA X. Specifically, we conclude that Taxpayer A has met the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the regulations. Additionally, because the statute of limitations is still open, under section 301.9100-3(c)(1)(ii) of the Regulations, granting relief will not prejudice the interests of the Government.

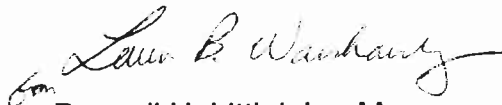
Accordingly, Taxpayer A is granted an extension of time not to exceed 60 days as measured from the date of this letter ruling to recharacterize Amount A, held in Roth IRA Y, plus earnings attributable thereto, as a contribution to a traditional IRA.

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.

If you wish to inquire about this ruling, please contact \*\*\*, I.D. No. \*\*\*, at ( )  
\*\*\*\* or ( ) \*\*\* (FAX). Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



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

Enclosures:

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Notice of Intention to Disclose, Notice 437