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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

UIL: 408.00-00
408A.00-00

APR - 7 2010

T:EP:RA:T3

Legend:

Taxpayer A:

Taxpayer B:

Fund F:

IRA X:

Roth IRA Y:

Company D:

Firm G:

Year 1:

Date 1:

Date 2:

Amount L:

Amount M:

Dear :

In a letter dated , you, through your authorized representative, requested a ruling in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations. The request was supplemented by an E-Mail dated . The following facts and representations support your ruling request.

Taxpayer A is married to Taxpayer B. With respect to the tax years relevant to this request for letter ruling, Taxpayers A and B filed a joint Federal Tax Return (Federal Form 1040).

During Year 1, Taxpayers A and B invested in Fund F. Taxpayers A and B suffered losses from their investment in Fund F which losses affected their Federal adjusted gross income with respect to their 2007 tax year. Said losses were reported on their 2007 tax year Federal Form 1040.

It has been represented that Taxpayers A and B relied upon the advice of long standing investment advisors prior to investing in Fund F.

Taxpayer A maintained IRA X, an individual retirement arrangement described in section 408(a) of the Internal Revenue Code (the "Code"), with Company D. On or about Date 1, 2007, Taxpayer A converted IRA X in the amount of Amount L to a Roth IRA, Roth IRA Y, also with Company D. At the time of the conversion, Taxpayers A and B believed their Federal adjusted gross income for 2007 would not exceed the limit found at section 408A(c)(3)(B) of the Code because of the losses they suffered from their investment in Fund F.

Subsequent to the to the IRA "conversion" referenced above, the Internal Revenue Service ("Service") began a national audit of Fund F on the basis investment in said Fund F constituted a tax shelter transaction. Taxpayers A and B have been advised by the Service that it intends to disallow their "claimed" loss from investing in Fund F in the amount of Amount M. Such disallowance would result in Taxpayers A and B having a tax year 2007 adjusted gross income that exceeded the limit found in section 408A(c)(3)(B) of the Code which would make Taxpayer A ineligible to have made the above referenced conversion of IRA X to Roth IRA Y.

On or about Date 2, 2009, the Service issued a Form 906 Settlement Adjustment to Taxpayers A and B relating to its proposed denial of their "claimed" losses stemming from their investment in Fund F. It has been asserted on behalf of Taxpayers A and B by their authorized representative that Taxpayers A and B will settle the Fund F loss issue if the Service issues a favorable response to their letter ruling request.

Taxpayers A and B timely filed their calendar year joint Federal Income Tax Return which return was prepared by Firm G.

Based on the above you request the following letter ruling:

That, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed months from the date of this ruling letter to recharacterize his Roth IRA Y to 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 Income Tax 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 to 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 and Answer-6 of the regulations, describes how a taxpayer makes the election to recharacterize the IRA contributions. 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 1.408A-4, Q&A-2, provides, in summary, 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, in summary which is relevant to Taxpayers A and B, 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 subject to the \$100,000 limit for 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 Procedure and Administration Regulations, in general, provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) of the regulations provides that the Commissioner of the Internal Revenue Service, 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 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 the 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 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 the tax year 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 this case, Taxpayer A was ineligible to convert IRA X to Roth IRA Y since Taxpayers A's and B's adjusted gross income exceeded \$100,000. However, Taxpayer A believed that he was eligible to convert his IRA X to Roth IRA Y until he discovered otherwise when the Service notified him that it proposed to disallow losses shown on his tax year 2007 Federal form 1040 at which time the deadline to reconvert Roth IRA Y to a traditional IRA had passed. Taxpayers A and B filed this request for section 301.9100 relief shortly after discovering that Taxpayer A was ineligible to convert IRA X to Roth IRA Y. Calendar year 2007 is not a "closed" tax year under the statute of limitations.

With respect to your request for relief, we believe that, based on the information submitted and the representations made, the requirements of section 301.9100-1 and 301.9100-3 of the regulations been met, and that you have acted reasonably and in good

faith with respect to making the election to recharacterize Roth IRA Y as a traditional IRA. Specifically, the Service has concluded that you have met the requirement of clauses (iii) and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of 60 days from the date of the issuance of this letter ruling to so recharacterize.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section or either the Code or regulation which may be applicable thereto.

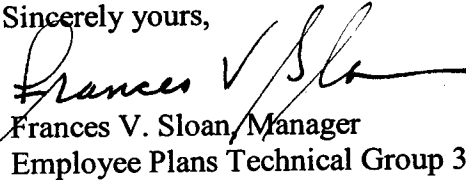
This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A (whichever is relevant) at all relevant times. It also assumes that only amounts maintained in Roth IRA Y will be recharacterized, and that the amount maintained in Roth IRA Y which will be recharacterized as a traditional IRA will not exceed Amount L (the amount originally converted into Roth IRA Y).

This letter 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 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 questions regarding this ruling, please contact (ID#
) , at () - or by fax at () - .

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3