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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 07 2012

201218037

UIL No.: 9100.00-00

T:EP:RA:T

Legend :

Taxpayer A =

Taxpayer B =

Traditional IRA C =

Traditional IRA D =

Roth IRA E =

Roth IRA F =

Tax Advisor G =

Sum H =

Sum I =

Company M =

Dear :

This is in response to a letter dated May 24, 2011, as supplemented by correspondence dated January 10, 2012, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations") on your behalf. You submitted the following facts and representations in connection with your request.

Taxpayer A participates in a simplified employee pension plan ("Traditional IRA C") as defined in section 408(k) of the Internal Revenue Code (the "Code"). Taxpayer B maintained an individual retirement arrangement ("Traditional IRA D") as described in section 408(a). On or about December 20, 2009, Taxpayer A converted a portion of Traditional IRA C equal to Sum H into Roth IRA E, and Taxpayer B converted

Traditional IRA D equal to Sum I into Roth IRA F. All of the IRA accounts are maintained by Company M.

While preparing Taxpayer A's and Taxpayer B's joint Federal Income Tax Return for 20 ("20 Return"), the Taxpayers' CPA, Tax Advisor G, discovered that the Taxpayers' modified adjusted gross income exceeded the $ limitation in Code section 408A(c)(3) for the 20 year. Tax Advisor G proceeded to recharacterize the Roth conversions and reported the recharacterizations on the Taxpayers' 20 Return, which was timely filed on April 7, 20 . In March of 2011, after the due date for a timely recharacterization of the Taxpayers' Roth conversions, Tax Advisor G realized he had failed to advise Taxpayers A and B to notify their IRA trustee and request a transfer of the funds from Roth IRAs E and F back to traditional IRA accounts.

On October 11, 20 , the Internal Revenue Service (the "Service") issued the Taxpayers a Notice of Deficiency pertaining to the 20 taxable year.

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 and Taxpayer B be granted an extension of time to recharacterize Roth IRAs E and F back to traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the regulations, Code section 408A(c)(3) 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 federal Income Tax Regulations (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-4 of the I.T. Regulations provides that a SEP IRA can be converted to a Roth IRA on the same terms as an amount in any other traditional IRA.

Code section 408A(d)(6) and section 1.408A-5, Q&A-1 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 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. 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, Q&A-5 of the I.T. Regulations provides that employer contributions

(including elective deferrals) under a SEP IRA cannot be recharacterized as contributions to another IRA under Q&A-1 of this section. However, an amount converted from a SEP IRA to a Roth IRA may be recharacterized under Q&A-1 of this section as a contribution to a SEP IRA, including the original SEP IRA.

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.

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 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.

In this case, Taxpayers A and B were not eligible to convert Traditional IRAs C and D, respectively, into Roth IRAs because their modified adjusted gross income exceeded $ for 20 . Taxpayers A and B failed to recharacterize their Roth IRAs back to traditional IRAs by the time permitted by law. Therefore, it is necessary to determine whether Taxpayers A and B are eligible for relief under the provisions of section 301.9100-3 of the regulations.

In preparing the Taxpayers' 20 Return, Tax Advisor G discovered that the Taxpayers were ineligible to convert their traditional IRAs into Roth IRAs and proceeded to recharacterize the conversions by April 15, 20 , the due date for recharacterizing the conversions. He reported the recharacterization of the Taxpayers' Roth conversions on line 15a of their 20 Return and reported a "0" taxable amount on line 15b. However, he failed to advise the Taxpayers to inform Company M of the recharacterizations, to provide Company M with the necessary information, and to request a transfer back to Traditional IRAs C and D. Tax Advisor G did not discover his mistake until March, 20 , after the due date for recharacterizing the 20 conversions (i.e., the due date of the Taxpayers' 20 Return), had passed. Thus, Taxpayer A and Taxpayer B satisfy clause (v) of section 301.9100-3(b)(1) because they reasonably relied on Tax Advisor G. In addition, because the statute of limitations on the Taxpayers' 20 Return remains open, the interests of the government would not be prejudiced by providing relief.

Accordingly, we rule 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 to recharacterize Roth IRA E back to a SEP IRA; and

Taxpayer B is granted a period not to exceed 60 days from the date of this letter to recharacterize Roth IRA F back to a traditional IRA.

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

This letter is directed only to the taxpayers 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 with this office.

Should you have any concerns regarding this ruling, please contact .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted copy of letter
Notice 437

cc: