200525019

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 29 2005

UIL No.: 9100.00-00

Legend :

Taxpayer A.....

Taxpayer B.....

IRA C.....

IRA D.....

Roth IRA E.....

IRA F.....

IRA G.....

Roth IRA H.....

Roth IRA J.....

Roth IRA K.....

Roth IRA L.....

Roth IRA M.....

Company N.....

Company O.....

Dear :

This is in response to a letter dated October 25, 2004, as supplemented by correspondence dated January 27 and February 25, 2005, 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 maintained traditional individual retirement arrangements ("IRAs"), IRA C and IRA D, described in section 408 of the Internal Revenue Code (the "Code"), with Company N and Company O, respectively. Taxpayer B, Taxpayer A's spouse, maintained IRA F and IRA G with Company N and Company O, respectively. In 1999, Taxpayer A converted IRA C into Roth IRA J, and IRA D into Roth IRA K, with the same custodians as previously for each IRA. In 1999, Taxpayer B converted IRA F into Roth IRA L, with Company N, and IRA G into Roth IRA M, with Company O.

Taxpayer A and Taxpayer B requested two extensions of their [redacted] Federal Income Tax Return ("[redacted] Return") with the second extension due date October 15, 2000. However, due to extenuating circumstances experienced by Taxpayer A's and Taxpayer B's accountant, the taxpayers' [redacted] Return was not completed until February 20, 2002. In preparing Taxpayer A's and Taxpayer B's [redacted] Return, it became clear that the taxpayers' modified adjusted gross income exceeded the $100,000 limitation in Code section 408A(c)(3)(B) for the [redacted] year. On realizing their mistake, Taxpayer A and Taxpayer B requested that their Roth IRAs be recharacterized back to traditional IRAs. One institution, Company N, attempted to recharacterize Roth IRA J and Roth IRA L back into traditional IRAs, IRA E and IRA H. IRAs E and H will be referred to as "Roth" IRAs E and H since the time for recharacterization had passed.

Taxpayer A's and Taxpayer B's accountant was researching the issue of ineligibility for the Roth conversions when the taxpayers received a notice of proposed examination changes in June, 2003, from the Internal Revenue Service (the "Service"). The examination officer found that the taxpayers had improperly converted their IRAs to Roth IRAs in 1999 and that the recharacterization of Roth IRA K and Roth IRA M back to traditional IRAs was ineffective as it was past the October 15, 2000, due date for a timely recharacterization. Taxpayer A and Taxpayer B filed a tax court petition in response to a statutory notice of deficiency on this issue. Based on 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 to recharacterize their 1999 Roth IRA conversions, including Roth IRAs E and H, back to traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the regulations, 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) 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 Internal Revenue Service (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, Taxpayer A and Taxpayer B were not eligible to convert their traditional IRAs into Roth IRAs since their combined modified adjusted gross income exceeded $100,000 for 1999, the year of the conversions. Taxpayer A and Taxpayer B failed to recharacterize their Roth IRAs back to traditional IRAs by the time permitted by law. Therefore, it is necessary to determine whether they are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A and Taxpayer B were ineligible for the 1999 Roth IRA conversions, they were unaware that they were ineligible until the preparation of the [redacted] Return. Taxpayer A and Taxpayer B had timely requested an extension until October 15, 2000, but their accountant was unable to file the [redacted] Return by the extended due date because of extenuating circumstances. As a result, the mistake was not discovered until the filing of the [redacted] Return on February 20, 2002, at which time the due date for recharacterizing, October 15, 2000, had passed. Thus, Taxpayer A and Taxpayer B satisfy clauses (ii) and (iv) of section 301.9100-3(b)(1) because they inadvertently failed to make the election due to intervening events beyond their control, and they reasonably relied on a qualified tax professional. In addition, because the statute of limitations on the taxpayers' [redacted] Return is still 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 and Taxpayer B are granted a period of 60 days from the date of this ruling letter to recharacterize Roth IRA E, Roth IRA K, Roth IRA H and Roth IRA M back to traditional IRAs.

This letter assumes that the above IRAs qualify under Code section 408 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.

The original 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:
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