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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200544029

AUG - 8 2005

SE:T:EP:RA:T3

Uniform Issue List 9100.00-00

Legend:

Taxpayer A	=	***
Taxpayer B	=	***
IRA C	=	***
IRA D	=	***
Company E	=	***
Company F	=	***
Amount G	=	***
Amount H	=	***
Country I	=	***
Roth IRA X	=	***
Roth IRA Y	=	***

Dear . ***:

This is in response to a ruling request dated January 7, 2005, from your authorized representative, as supplemented by correspondence dated March 25, 2005 and May 6, 2005 in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations have been submitted in support of your ruling request:

Taxpayer A maintained a traditional individual retirement account (IRA C) with Company E. On ***, he converted IRA C with a value of Amount G to Roth IRA X maintained with Company E.

Taxpayer B maintained a traditional individual retirement account (IRA D) with Company E. On ***, she converted IRA D with a value of Amount H to a Roth IRA Y maintained with Company E (transferred subsequently to Company F).

At the time of the conversion, Taxpayer A and Taxpayer B were married and expected to have a modified adjusted gross income in *** below the $ 100,000 limit specified in *section 408A(c)(3)(B) of the Internal Revenue Code* ("Code").

In *** Taxpayer A had income on foreign accounts from interest, dividends and capital gains. These foreign accounts were located in a Country I financial institution. Taxpayer A overlooked this additional income because Taxpayer A's father was responsible for handling these accounts and had complete authority over said accounts including the right to use the funds. Taxpayer A was operating under the belief that the Company I accounts were the property of Taxpayer A's father as long as his father was alive, and, accordingly, did not believe these accounts were his property subject to U.S. taxation as such.

Taxpayer A personally prepared his calendar year *** Federal income tax return (Federal Form 1040) which he filed jointly with Taxpayer B. Taxpayer A and Taxpayer B timely filed their original *** income tax return. Taxpayer A and Taxpayer B elected to pay the income tax attributable to their Roth conversions over a four year period pursuant to Code section 408A(d)(3)(A)(iii).

During calendar year ***, Taxpayer A and Taxpayer B realized that the additional income derived from Country I sources should have been reported on their *** Federal income tax return. Due to this additional income, Taxpayers A and B filed amended joint Federal income tax returns (Federal forms 1040) for tax years *** that reflected the recharacterization of Roth IRA funds back to traditional IRA funds. These amended returns also eliminated the taxable "deemed" distribution resulting from the original conversion(s) of IRA C and IRA D to Roth IRA X and Roth IRA Y, respectively.

Amended Federal forms 1040 for calendar years *** through *** that accompanied this request for letter ruling included the following notation:

> "Including additional income disqualifies taxpayers from eligibility to convert their traditional IRA's to Roth IRA's and thus the deemed distribution (equal to ¼ of the value of the account on ***) has been eliminated from income on the amended return".

In short, the amended Federal Forms 1040 are consistent with Taxpayers A and B being ineligible to transfer their IRAs C and D to Roth IRAs X and Y respectively.

Subsequently, in October 2004, Taxpayer A and Taxpayer B first became aware, through the trustees of their Roth IRAs, of the deadlines for completing the rollover(s) of their Roth IRAs back to traditional IRAs in order to effectuate the "recharacterizations" of their respective Roth IRAs. As of the date of this ruling request, the "converted" funds remain in Roth IRA X and Roth IRA Y.

As of the date of this request, to the best of Taxpayer A's and Taxpayer B's knowledge, the Service has not discovered Taxpayer A's and Taxpayer B's failure to complete the rollovers or transfers necessary to effectuate their election(s) to recharacterize their Roth IRA X and Roth IRA Y to traditional IRA(s).

Based on the foregoing facts and representations, you have requested the following ruling:

> That, pursuant to sections 301.9100-1 and 301.9100-3 of the Regulations, Taxpayer A and Taxpayer B are granted a period not to exceed 60 days from the date of this ruling letter to make an election under section 1.408A-5 of the Federal Income Tax Regulations ("I.T. Regulations") to recharacterize Taxpayer A's Roth IRA X and Taxpayer B's Roth IRA Y to traditional IRA(s).

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 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) 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 Return for the year of contributions.

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.

Code section 408A(c)(3) provides, 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, of the I.T. Regulations 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, 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 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, 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.

Announcement 99-57 provided that a taxpayer who timely filed his or her 1998 federal income tax return would have until October 15, 1999, to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Announcement 99-104 provided that a taxpayer who timely filed his or her 1998 federal income tax return would have until December 31, 1999 to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

In this case, Taxpayer A and Taxpayer B were ineligible to convert their IRA C and IRA D to Roth IRA X and Roth IRA Y, respectively, since their modified adjusted gross income with respect to *** exceeded the $100,000 limit specified in section 408A(c)(3)(B) of the Code. Taxpayers A and B filed this request for section 301.9100 relief after timely filing their *** Federal Income Tax Return and after amending their Federal forms 1040 for calendar years *** through ***. Therefore, it is necessary to determine if Taxpayers A and B are eligible for relief under section 301.9100-3 of the regulations.

Prior to Taxpayer A and Taxpayer B filing their amended Federal Forms 1040 for *** through ***, the Service had neither discovered Taxpayer A's ineligibility to convert IRA C to Roth IRA X nor Taxpayer B's ineligibility to convert IRA D to Roth IRA Y. Taxpayers A and B were not made aware that their *** conversions did not comply with the requirements of section 408A(c)(3) of the Code and regulations promulgated thereunder until ***, when they discovered income generated from their Country I foreign accounts was subject to U.S. Federal taxation. In October 2004, in attempting to roll over the amounts originally transferred to Roth IRA X and Roth IRA Y, back into traditional IRAs pursuant to the advice of their CPA, which rollovers (or transfers) would have effectuated the "recharacterizations" and would have been consistent with the assertion shown on their *** amended Federal Forms 1040 that they were ineligible to convert IRAs C and D to Roth IRAs X and Y, Taxpayer A and Taxpayer B discovered that they could not roll over (or transfer) their respective Roth IRA converted amounts back to traditional IRAs. At that point, the time period prescribed by Code section 408A(d)(6) had expired. Furthermore, the extensions of time granted by Announcements 99-57and 99-104 had also expired.

Based on the information submitted and the representations contained herein, including, but not limited to Taxpayers A and B's having filed amended *** through *** Federal forms 1040 consistent herewith, the Service concludes that the requirements of section 301.9100-3 of the Regulations have been met, and that you have acted reasonably and in good faith with respect to making the election to recharacterize your Roth IRA X and Roth IRA Y as traditional IRAs, and that the granting of such relief will not prejudice the interest of the Federal Government.

This letter ruling is based on our finding that you have met the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the Regulations. Therefore, you are granted a period of 60 days from the date of the issuance of this letter ruling to recharacterize your Roth IRA X and Roth IRA Y as traditional IRAs.

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 based on the assumption that IRA C and IRA D either meet or have met the requirements in Code section 408 and Roth IRA X and Roth IRA Y either meet or have met the requirements in Code section 408A (where applicable), respectively, at all relevant times.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k) 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 letter ruling is being sent to your authorized representative.

Should you have any questions concerning this letter ruling, please contact *** at either *** or ***.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
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Notice of Intention to Disclose, Notice 437