TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 30 2005

200608030

SE:T:EP:RA:T1

Uniform Issue List: 9100.00-00

Legend:

Taxpayer A =

Taxpayer B =

IRA S =

IRA T =

IRA U =

Roth IRA V =

Roth IRA W =

Roth IRA X =

Roth IRA Y =

Roth IRA Z =

Company I =

Company J =

Company K =

Amount L =

Amount M =

Amount N =

Anount O =

Amount P =

Amount Q =

Dear :

This is in response to a ruling request dated June 2, 2005, as supplemented by additional information sent by facsimiles on August 11, 2005, and November 16, 2005, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations have been submitted:

Taxpayer A is married to Taxpayer B. Prior to getting married in [redacted], Taxpayer A maintained IRA S sponsored by Company K and IRA T, sponsored by Company I, and Taxpayer B maintained IRA U, sponsored by Company J, traditional individual retirement accounts under section 408(a) of the Internal Revenue Code ("Code"). On July 14, [redacted] Taxpayer A converted Amount L in IRA S to Roth IRA V. On December 17, [redacted], Taxpayer A converted Amount M in IRA T to Roth IRA Z. On December 19, [redacted], the account balance in Roth IRA V was transferred to Roth IRA W, which is a sub account of Roth IRA Z. On January 28, [redacted], Taxpayer B converted Amount N in IRA U to Roth IRA X. On December 23, [redacted] Taxpayer B converted Amount O in IRA U to Roth IRA X. On June 14, [redacted], the account balance in Roth IRA X was transferred to Roth IRA Y sponsored by Company I.

Roth IRAs V, W, X, Y, and Z are subject to Code section 408A. For the [redacted] tax year, Taxpayer A and Taxpayer B had modified adjusted gross income (AGI) of Amount P.

The modified AGI limit under section 408A(c)(3)(B) for converting a traditional IRA to a Roth IRA is $100,000. Since the modified AGI of Taxpayers A and B exceeded the limit for conversions during the [redacted] tax year, the conversions were improper. Taxpayer A and Taxpayer B were unaware of this rule. In addition, Taxpayers A and B were unaware of the October 15, [redacted] deadline to recharacterize the failed Roth IRA conversions back to traditional IRAs. During the [redacted] and [redacted] taxable years, Taxpayer A and Taxpayer B made regular contributions of Amount Q to Roth IRA Z (held by Company I) and Roth IRA X, respectively.

Based on the foregoing facts and representations, you have requested the following ruling: that, pursuant to section 301.9100-3 of the Regulations, Taxpayers A and B are granted a period not to exceed 60 days from the date of this ruling letter to recharacterize failed conversion Amounts L, M, N, and O to traditional IRAs. Amount L was contributed in [redacted] by Taxpayer A to Roth IRA V and then the account balance in Roth IRA V was transferred to Roth IRA W, a sub account of Roth IRA Z. Amount M was contributed in [redacted] by Taxpayer A to Roth IRA Z. Amounts N and O were contributed in [redacted] by Taxpayer B to Roth IRA X and then the account balance in Roth IRA X was transferred to Roth IRA Y in [redacted]

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 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, Q&A-2(c)(1) of the I.T. Regulations provides, in effect, that if the amount of the contribution being recharacterized was contributed to a Roth IRA and distributions or additional contributions have been made from or to that IRA at any time, then the net income attributable to the amount of a contribution being recharacterized is determined by allocating to the contribution a pro-rata portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula: Net Income = Contribution x (Adjusted Closing Balance – Adjusted Opening Balance)/Adjusted Opening Balance. The items in the above formula are defined in section 1.408A-5, Q&A-2(c)(2) of the I.T. Regulations.

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 (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.

Section 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) 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, the adjusted gross income of Taxpayers A and B exceeded $100,000. Thus, Taxpayer A was ineligible to convert Amount L from traditional IRA S and Amount M from traditional IRA T to Roth IRAs V and Z, respectively, and Taxpayer B was ineligible to convert Amounts N and O from traditional IRA U to Roth IRA X.

However, Taxpayers A and B were unaware they were ineligible to convert their traditional IRAs to Roth IRAs until they discovered that they were ineligible while preparing their return for the [redacted] tax year. Their modified AGI for the [redacted] tax year exceeded the $100,000 limit under section 408A(c) (3)(B). Taxpayers A and B filed this request for section 301.9100 relief shortly after discovering that they were ineligible to make the conversions and before the Service discovered their failure to make a timely election to recharacterize the failed conversions.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of sections 301.9100-1 and 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 failed conversions as traditional IRAs. Specifically, the Service has concluded 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 an extension of 60 days from the date of the issuance of this letter ruling to so recharacterize. The ruling only applies to amounts converted from traditional IRAs to Roth IRAs and not any regular contributions to a Roth 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 based on the assumption that IRAs S, T, and U and Roth IRAs V, W, X, Y, and Z meet the requirements Code sections 408 and 408A, 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.

Should you have any questions concerning this letter ruling, please contact , SE:T:EP:RA:T1 (ID#), of my staff at .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
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