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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 09 2002

T:EP:RA:T1

UIL No.: 9100.00-00

Legend :

Taxpayer A.....

Taxpayer B.....

IRA C.....

IRA D.....

IRA E.....

IRA F.....

IRA G.....

IRA H.....

IRA I.....

IRA J.....

IRA K.....

IRA L.....

IRA M.....

IRA N.....

Company O.....

Company P.....

Company Q.....

Sum X.....

Sum Y.....

Sum Z.....

Dear :

This is in response to a letter dated November 19, 2001, as supplemented by correspondence dated February 27, 2002, March 8, 2002, March 21, 2002, April 9, 2002, and August 22, 2002, submitted by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). The following facts and representations were submitted in connection with your request.

Taxpayer A maintained three individual retirement arrangements described in section 408(a) of the Internal Revenue Code (the "Code"), IRA C, IRA D, and IRA E with Company O, Company P and Company Q, respectively. In December of 1998, on the advice of an accountant, Taxpayer A converted IRAs C, D and E into Roth IRAs I, J and K with Companies O, P and Q, respectively. The amounts converted from IRAs C, D and E were Sum X, Sum Y and Sum Z, respectively.

Taxpayer A's spouse, Taxpayer B, maintained IRA F, IRA G and IRA H with Company O, Company P and Company Q, respectively. In December of 1998, Taxpayer B also converted IRAs F, G and H into Roth IRAs L, M and N with Companies O, P and Q, respectively, on the advice of an accountant. The amounts converted from IRAs F, G and H were Sum X, Sum Y and Sum Z, respectively. Taxpayers A and B jointly filed their calendar year 1998 federal income tax return in November or December of 2001. Due to health problems, their return was not filed on a timely basis. With respect to calendar year 1998, Taxpayer A's and Taxpayer B's modified adjusted gross income exceeded the limit found in Code section 408A(c)(3)(B). Through a misunderstanding of the Roth IRA rules, Taxpayers A and B believed that they were eligible for the conversions to Roth IRAs since they believed that the limit was based on taxable income, not modified adjusted gross income, and their taxable income was less than $100,000 (the applicable limit).

At the end of 2001, Taxpayers A and B were informed by their tax return preparer that they were ineligible for the 1998 Roth conversion due to the $100,000 limitation in Code section 408A(c)(3)(B). This request for section 301.9100 relief was submitted prior to the Service's discovering Taxpayer A's and Taxpayer B's ineligibility to convert their traditional IRAs into Roth IRAs.

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 a period not to exceed six months from the date of this ruling letter to recharacterize Roth IRAs I, J, K, L, M, and N back to traditional IRAs.

With respect to your ruling request, 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, 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 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 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 Internal Revenue Service (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 their traditional IRAs to Roth IRAs since Taxpayer A's and Taxpayer B's combined modified adjusted gross income exceeded $100,000 for 1998. Therefore, it is necessary to determine whether they are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayers A and B were ineligible for the 1998 Roth IRA conversion, they were unaware of their ineligibility until the end of 2001 when they were so informed by their tax return preparer. Upon realizing the mistake, Taxpayers A and B requested relief from the Service before the Service discovered Taxpayer A's and Taxpayer B's failure to make a timely election to recharacterize their Roth IRA conversions. The 1998 calendar taxable year is not closed by the statute of limitations. Thus, Taxpayers A and B satisfy the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the regulations. Accordingly, we rule that, pursuant to section 301.9100-3 of the regulations, Taxpayers A and B are granted a period not to exceed six months from the date of this letter to recharacterize their Roth IRAs 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 taxpayers who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, the original ruling letter is being sent to your authorized representative. Should you have any concerns regarding this ruling, please contact .

Sincerely yours,

Andrew E. Zuckerman

Andrew E. Zuckerman, Manager
Employee Plans Technical Group 1

cc:

Enclosures:
Deleted copy of letter
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