200319008

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 12 2003

T:EP:RA:T1

UIL No.: 9100.00-00

Legend :

Taxpayer A.....

Taxpayer B.....

IRA C.....

IRA D.....

IRA E.....

IRA F.....

IRA G.....

Company O.....

Company P.....

Sum W.....

Sum X.....

Sum Y.....

Sum Z.....

Dear :

This is in response to a letter dated October 15, 2002, as supplemented by correspondence dated December 6, 2002, and December 11, 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.

In mid-1998, Taxpayer A transferred Sum W from an individual retirement account ("IRA") to Company O for investment in an IRA with Company O. Company O invested Sum W in two IRAs, IRA C and IRA D, with Sum X in IRA C and Sum Y in IRA D. Taxpayer A believed that Sum W was invested in a single IRA with Company O. In late 1998, Taxpayer A and Taxpayer B, Taxpayer A's spouse, anticipated having a modified adjusted gross income of less than $100,000 for the 1998 taxable year. Based on this estimate, at the suggestion of Company O, IRAs C and D were converted into Roth IRAs E and F, respectively. Company O indicated to Taxpayer A that should his and Taxpayer B's adjusted gross income exceed the $100,000 limit, the Roth IRAs could be converted back into traditional IRAs without tax consequences.

In early April 1999, Taxpayer A discovered that Taxpayer A's and Taxpayer B's modified adjusted gross income for 1998 exceeded $100,000. Taxpayer A contacted Company O, and sent a letter requesting that Roth IRA F be recharacterized back to a traditional IRA. The letter with the account number for IRA F was furnished by Company O, and Taxpayer A believed he had only one Roth IRA account resulting from the conversion of a single traditional IRA with Company O. Taxpayer A and Taxpayer B timely and jointly filed their calendar year 1998 federal income tax return with extensions.

In 2002, Taxpayer A transferred his investments from Company O to Company P. Roth IRA E was transferred to Roth IRA G with Company P. Soon after the transfer, Company P informed Taxpayer A that his Roth IRA was still in existence and could not be converted back into a traditional IRA. Therefore, Taxpayer A missed the deadlines provided in Announcement 99-57, 1999-24 I.R.B. 50 (June 14, 1999) and Announcement 99-104, 1999-44 I.R.B. 555 (November 1, 1999), which would have allowed Taxpayer A to recharacterize the failed Roth conversion until December 31, 1999. Taxpayer A then contacted his tax advisor, who recommended filing this request for relief under section 301.9100-3 of the regulations. This request for relief was made before the Service discovered Taxpayer A's failure to make a timely election to recharacterize Roth IRA E. As of November 30, 2002, Sum Z was invested in Roth IRA G.

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 be granted an extension of time to recharacterize Roth IRA G back to a traditional IRA.

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, Taxpayer A was not eligible to convert his 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.

Once it became clear in early 1999 that their 1998 modified adjusted gross income exceeded $100,000 (the applicable limit), Taxpayer A converted Roth IRA F back into a traditional IRA. However, because a single IRA was originally transferred to Company O, Taxpayer A was not aware that Company O had established a second IRA, IRA D, which had also been converted into a Roth when the conversion was made for IRA C in 1998. In 2002, when Taxpayer A transferred his investments from Company O to Company P, Company P informed him that Roth IRA E (now designated Roth IRA G) was still in existence. Taxpayers A and B consulted with their tax advisor, and submitted this request for relief. This request was made before the Service discovered Taxpayer A's failure to make a timely election to recharacterize Roth IRA G back into a traditional IRA. Thus, Taxpayer A satisfies 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, Taxpayer A is granted a period not to exceed six months from the date of this letter to recharacterize his Roth IRA 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.

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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