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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAY 12 2004

UIC: 9100.00-00

Legend:

Taxpayer A =

Taxpayer B =

Company C =

IRA X =

Sum 1 =

Roth IRA X =

Month 1 =

Year 1 =

Dear :

This is in response to a letter dated , in which you requested relief under section 301.9100-3 of the Procedure and Administration Regulations. The following facts and representations support your ruling request.

Taxpayer A is married to Taxpayer B. During calendar Year 1, Taxpayers A and B timely filed a joint Federal Income Tax Return (Form 1040).

During Month 1, Year 1, Taxpayer A converted traditional IRA X to Roth IRA X. The value of the converted traditional IRA X was Sum 1.

At the time of the "conversion" Taxpayer A believed that she was eligible to so convert because she and Taxpayer B believed that such conversion was precluded only if their joint modified adjusted gross income (AGI) for Federal tax purposes exceeded \$160,000 which is the phase-out AGI limit applicable to yearly contributions to a Roth IRA. Subsequent to the "conversion" transaction, Taxpayers A and B ascertained that the AGI limit applicable to "conversions" for a married couple filing jointly was \$100,000.

It has been represented that Taxpayer A took primary responsibility for handling her financial affairs including, but not limited to, those relating to her traditional and Roth IRAs.

To date, Taxpayer A has not "recharacterized" her Roth IRA X as a traditional IRA.

As of the date of this ruling request, the Internal Revenue Service ("Service") had not advised Taxpayer A that she was ineligible to convert her traditional IRA X to a Roth IRA.

Based on the above facts and representations, Taxpayers A and B request the following letter ruling:

Taxpayer A requests an extension of 60 days measured from the date of this letter ruling to recharacterize her Roth IRA X as a traditional IRA pursuant to section 301.9100-3 of the Procedure and Administration Regulations.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the Income Tax 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 to the transferor IRA. Under section 408A(d)(6) and 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 of the regulations, Question and Answer-6, 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 specific information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Section 408A(c)(3) of the Code 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 account other than a Roth IRA during that taxable year.

Section 1.408A-4 of the regulations, Q&A-2, provides, in summary, that an individual with modified AGI in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Q&A-2 further provides that a married individual is permitted to convert a traditional IRA to a Roth IRA only if the individual and his/her spouse file a joint Federal Income Tax Return. Furthermore, the AGI is the 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 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) of the regulations provides that the Commissioner of the Internal Revenue Service, in his discretion, may grant a reasonable extension of time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for making of a 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 of the regulations 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(a) of the regulations provides the application 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)) 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 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 timely filed their joint 2002 Federal Income Tax Return (Form 1040). When they filed their Federal Form 1040, Taxpayers A and B were not aware that they were ineligible to convert Taxpayer A's traditional IRA X into a Roth IRA because they were mistaken as to the applicable adjusted gross income limitation.

In this case, Taxpayers A and B filed this request for relief under section 301.9100 shortly after discovering that they were ineligible to convert Taxpayer A's traditional IRA X to Roth IRA X because her conversion was tainted due to their 2002 AGI exceeding permissible limits. Furthermore, as of the date of this ruling request, the Service had not raised Taxpayer A's inability to convert with them.

Thus, with respect to Taxpayers A and B's request for relief, we believe that, based on the information and the representations contained therein, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have been met, and Taxpayers A and B acted reasonably and in good faith with respect to requesting an extension of time in order to recharacterize Taxpayer A's Roth IRA X as a traditional IRA. Specifically, we conclude that Taxpayers A

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and B have met the requirements of clause (iii) of § 301.9100-3(b)(1) of the regulations. Therefore, Taxpayers A and B are granted an extension of time not to exceed 60 days as measured from the date of this letter ruling to recharacterize Taxpayer A's Roth IRA X as a traditional 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 directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Please note that in recharacterizing Taxpayer A's Roth IRA X as a traditional IRA, Taxpayers A and B must file an amended calendar year 2002 Federal Income Tax Return (Form 1040) consistent therewith if they have not already done so.

If you have any questions please contact \_\_\_\_\_, I.D. \_\_\_\_\_, at  
(Phone) and ( \_\_\_\_\_ (FAX).

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of this letter
- Notice of Intention to Disclose, Notice 437