Uniform Issue List: 9100.00-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200610025

DEC 14 2005

SE:T:EP:RA:T4

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Legend:

Taxpayer A = **********

Taxpayer B = **********

Company M = **********
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Roth IRA 1 = **********
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Roth IRA 2 = **********
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Dear **********:

This is in reply to a request for a ruling signed on November 29, 2004, as supplemented by additional correspondence dated August 10, 2005, September 15, 2005, and faxes dated October 20, 2005, and October 27, 2005, from your authorized representative, in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations ("Regulations").

The following facts and representations have been submitted:

Taxpayers A and B maintained Roth IRA 1 and Roth IRA 2, respectively, at Company M. Documentation submitted with this ruling request indicates that Taxpayer A and Taxpayer B each made contributions to the respective Roth IRA of $[redacted] for the [redacted]

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tax year on April 6, [redacted], $[redacted] for the [redacted] tax year on April 10, [redacted] and $[redacted] for the [redacted] tax year on April 10, [redacted].

In April [redacted] their authorized representative, who also prepared their Federal tax returns (Forms 1040), advised Taxpayers A and B to recharacterize their calendar year 2002 Roth IRA contributions as traditional IRA contributions because their adjusted gross income for calendar year [redacted] was too high to permit contributions to Roth IRAs for said year. Furthermore, he advised them that they were eligible to make calendar year [redacted] tax-deductible contributions to traditional IRAs .

On April 16, [redacted], Taxpayers A and B signed "IRA Recharacterization Forms" ("Forms") with Company M requesting that Company M recharacterize their calendar year [redacted] contributions to Roth IRA 1 and Roth IRA 2 as contributions to traditional IRAs. It has been represented that both requests were received by an employee of Company M. However, documentation submitted with this ruling request indicates that the Forms referred to contributions made on April 10, [redacted], for calendar year [redacted] As noted above, contributions made on April 10, [redacted] were made for calendar year [redacted] Neither Taxpayer A nor Taxpayer B noted the discrepancy when signing the appropriate Form.

On May 6, [redacted] Company M mailed a letter to Taxpayer A indicating that it had received his recharacterization request but that he needed to set up a self-directed traditional IRA with Company M in order for Company M to process his request. Taxpayer A has asserted in conjunction with this ruling request that he did not receive the May 6, [redacted] letter.

This letter ruling request includes a December 14, [redacted] letter from Company M to Taxpayer B which indicates, in relevant part, that it received a recharacterization request from her relating to her calendar year [redacted] Roth IRA contribution. The December 14, [redacted] letter also provides that due to a processing error, Company M did not process Taxpayer B's request and, as a result, did not send her a letter informing her of the necessity to set up a self-directed traditional IRA.

Taxpayers A and B filed joint Federal income tax returns (Forms 1040) and claimed deductions of $[redacted] on their income tax returns for the [redacted] and [redacted] tax years for yearly contributions of $[redacted] made to each of their IRAs. As of the date of this request, the contributions and earnings thereon remain in the Roth IRAs. Taxpayer A asserts that he was not an active participant in a Code section 401(a) qualified plan during the [redacted] and [redacted] tax years.

By letter dated August 8, [redacted] the Internal Revenue Service office in Chamblee, Georgia, sent a notice to Taxpayers A and B proposing changes to their [redacted] tax return including the disallowance of the deduction of $[redacted] for contributions to their IRAs.

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(Notice CP2000). The tax year [redacted] Notice CP 2000 predates Taxpayers A and B's request for letter ruling.

By letter dated August 8, 2005, the Internal Revenue Service office in Philadelphia, Pennsylvania, sent a notice to Taxpayers A and B proposing changes to their [redacted] tax by $[redacted] (Notice CP2000). The tax year [redacted] Notice CP2000 indicated that the Service reduced Taxpayers A and B's IRA deduction for tax year [redacted] from $[redacted] to 0. Taxpayers A and B's request for letter ruling predates their receipt of the tax year [redacted] Notice CP 2000.

Calendar years [redacted] and [redacted] are not barred by the statute of limitations.

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 Taxpayers A and B may make an election under section 1.408A-5 of the Income Tax Regulations (I.T. Regulations) to recharacterize their contributions to Roth IRA 1 and Roth IRA 2, respectively, for tax years 2002 and 2003 as contributions to traditional IRAs as long as said election is made no later than 60 days from the date of issuance of this ruling letter.

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 contributions, 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 Code section 408(d)(6) and section 1.408A-5 of the I.T. Regulations, 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 contribution.

Section 1.408A-5, Question and Answer-6(a) of the I.T. Regulations, describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount to be converted: (1) the taxpayer must notify the trustee for the first IRA and the trustee to the second IRA, that the taxpayer has elected to treat the contribution as having been made to the second IRA, instead of the first IRA, (2) the amount and year of the contribution to the first IRA that is to be recharacterized (and if the transferee trustee is different from the transformer trustee with specific information that is sufficient to effect the rechariterization), and (3) the trustee must make the transfer.

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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.

Taxpayer A and Taxpayer B filed joint Federal income tax returns for tax years [redacted] and [redacted] and claimed deductions for the tax years [redacted] and [redacted] for contributions to their IRAs. At the time Taxpayers A and B made their calendar year [redacted] contributions to their Roth IRAs Taxpayer A and Taxpayer B were not aware that they were ineligible to make said Roth IRA contributions. They became aware of said ineligibility when their

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authorized representative informed them that their income was too high to make contributions to Roth IRAs. At that point, on or about April 16, [redacted], Taxpayers A and B, made aware that they were eligible to make tax-deductible contributions to traditional IRAs by their authorized representative, signed requests with Company M to recharacterize the contributions from the Roth IRAs to traditional IRAs for the [redacted] tax year. The receipt of said requests has been acknowledged by Company M, as noted above, and, as further noted above, Company M has also acknowledged its error in processing Taxpayer B's request for recharacterization.

With respect to the [redacted] tax year, Taxpayer A and Taxpayer B signed their request for relief under section 301.9100 of the Regulations on November 29, 2004 which was after they received a Notice CP 2000 dated August 30, [redacted] from the Internal Revenue Service proposing to disallow deductions of $[redacted] for contributions to the IRAs for [redacted] Under these circumstances, Taxpayer A and Taxpayer B have not met the requirements of clause (i) of section 301.9100-3(b)(1) of the Regulations. However, based on the above, we believe that Taxpayer A and Taxpayer B met the requirements of clause (ii) of section 301.9100-3(b)(1) of the Regulations for the [redacted] tax year. Therefore, Taxpayer A and Taxpayer B are granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharcterize their calendar year [redacted] contributions to their Roth IRAs, Roth IRA 1 and Roth IRA 2, as contributions to traditional IRAs.

With respect to the [redacted] tax year, as noted above, Taxpayers A and B's request for relief under section 301.9100-3(b)(1) of the Regulations was filed with the Service prior to their receiving a Notice CP 2000 with respect to said year. Thus, although Taxpayers A and B have not satisfied the requirements of clauses (ii) through (v) of section 301.9100-3(b)(1) of the Regulations, they have satisfied the requirements of clause (i) of section 301.9100-3(b)(1) of the Regulations, even though the time period under Code section 408A(d)(6) and section 1.408A-5 of the I.T. Regulations has expired. Therefore, Taxpayer A and Taxpayer B are granted an extension of 60 days as measured from the date of this ruling letter to recharcterize their calendar year [redacted] contributions to Roth IRA 1 and Roth IRA 2 as contributions to 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 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.

A copy of this letter ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

200610025

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If you have any questions please contact **********.

Sincerely yours,

Donzell Littlejohn

Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437