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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 01 2008

Uniform Issue List: 9100.00-00

SE:T:EP:RA:T1

Legend:

Taxpayer =

IRA A =

Financial Institution B =

IRA C =

Financial Institution D =

Roth IRA E =

Roth IRA F =

IRA G =

Roth IRA H =

Roth IRA I =

IRA J =

Company K =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This letter is in response to a request for a letter ruling dated September 5, 2007, as supplemented by additional correspondence submitted by facsimile on February 15, 2008, from your authorized representative, 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 under penalty of perjury in support of the ruling requested:

Taxpayer maintained IRAs A and C sponsored by Financial Institutions B and D, respectively. Both IRAs are traditional individual retirement accounts under section 408(a) of the Internal Revenue Code ("Code"). Taxpayer is the sole shareholder of Company K, an S corporation. All income and expenses are reported on Schedule K-1 and included in Taxpayer's individual income tax return.

In December of 2005, Taxpayer consulted his attorney and certified public accountant (CPA) for year-end tax planning. His CPA advised that due to an anticipated loss of $200,000 to $300,000 from Company K, Taxpayer's adjusted gross income (AGI) should be under $100,000, the limit for making a qualified Roth IRA rollover contribution under section 408A(c)(3)(B) of the Code. Pursuant to this information, the attorney advised Taxpayer that he should transfer Amount 1 from IRA A to Roth IRA E and Amount 2 from IRA C to Roth IRA H. On December 30, 2005, Taxpayer believed he had successfully converted his traditional IRAs A and C to Roth IRAs E and H, respectively, for 2005 and was unaware that he was ineligible to convert his traditional IRAs to Roth IRAs for this taxable year. In April, 2007, the account balances in Roth IRAs E and H were transferred to Roth IRAs F and I, respectively. Subsequently, in June, 2007, the account balances in Roth IRAs F and I were transferred to traditional IRAs G and J, respectively.

However, instead of loss for 2005, Company K had income of Amount 3. Since Taxpayer and his spouse's AGI for 2005 (Amount 4) was above the limit under section 408A(c)(3)(B) of the Code, he was ineligible to convert a traditional IRA to a Roth IRA. This was not discovered until Taxpayer's year-end tax planning meeting with his advisors in December of 2006. Thus Taxpayer's attorney and CPA failed to advise him of the requirement to recharacterize the failed Roth IRA conversions back to traditional IRAs by the October 15, 2006 deadline.

Roth IRAs E, F, H, and I are subject to Code section 408A. For the 20 taxable year, Taxpayer had AGI of Amount 3. Since the AGI of Taxpayer exceeded the limit for conversions during the 20 tax year, the conversions were improper. Taxpayer relied on his attorney and CPA who prepared his 2005 tax return. Taxpayer's tax return for the 20 taxable year is not currently under examination for issues unrelated to the above failed conversions.

Based on the foregoing facts and representations, you have requested the following ruling: that, pursuant to section 301-9100-3 of the Regulations, Taxpayer is granted a period not to exceed 60 days from the date of this ruling to recharacterize failed conversions to Roth IRA E and Roth IRA F to traditional IRAs.

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-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 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 temporary 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 Taxpayer exceeded $100,000 for tax year 20 . While Taxpayer was ineligible to convert Amount 1 from IRA A to Roth IRA E and Amount 2 from IRA C to Roth IRA H, he relied on tax professionals to make the conversions. Taxpayer was unaware he was ineligible to convert his traditional IRAs to Roth IRAs until this was discovered during a year-end tax planning meeting in December, 2006. His AGI for the 20 tax year exceeded the $100,000 limit under Code section 408(A)(c)(3)(B). Taxpayer filed this request for section 301.9100 relief shortly after discovering he was 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 Taxpayer's 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 Taxpayer acted

reasonably and in good faith with respect to making the election to recharacterize the failed conversions as traditional IRAs. Specifically, the Service has concluded that Taxpayer has met the requirements of clauses (i), (iii), and (v) of section 301.9100-3(b)(1) of the Regulations. Therefore, Taxpayer is 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 A, C, G, and J and Roth IRAs E, F, H, and I meet the requirements Code sections 408 and 408A, respectively, at all relevant times.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact , SE:T:EP:RA:T1, (I.D. #), at .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: