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

APR 15 2009

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 9100.00-00

SETTLEMENT

Re: Control Number:

Legend:

- Taxpayer A =
- Taxpayer B =
- IRA A =
- Roth IRA B =
- Financial Institution C =
- Individual D =
- Company E =
- Individual F =
- Company G =
- Amount 1 =

Dear :

This is in response to a request for a private letter ruling dated April 8, 2008, from your authorized representative, in which you have applied for 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 A and his spouse, Taxpayer B ("Taxpayers"), timely filed a joint federal income tax return for calendar year

Taxpayer A maintained IRA A, a traditional individual retirement account (IRA) under section 408(a) of the Internal Revenue Code ("Code") and Roth IRA B, a Roth IRA under section 408A of the Code. Both are sponsored by Financial Institution C. On the advice of Company E, investment advisor to the Taxpayers, Taxpayer A transferred Amount 1 from IRA A to Roth IRA B on August 18, 2005. Company E alerted the Taxpayers that eligibility to convert a traditional IRA to a Roth IRA depended on their modified adjusted gross income ("AGI") not exceeding \$100,000. To assist the Taxpayers in the preparation of their tax return, Company E furnished them with a document entitled "Tax Preparer Information" and a copy of the Form 1099-R issued by Financial Institution C, which reported a distribution totaling Amount 1 from Taxpayer A's traditional IRA. Though Company E had a copy of Taxpayers' tax return, Company E did not discover that Taxpayer A was ineligible to convert his traditional IRA A to Roth IRA B until it reviewed Taxpayers' tax return in , at which time Company E realized that the Taxpayers' modified AGI for both . and exceeded the \$100,000 limit under section 408A(c)(3)(B) of the Code. In November of 2007, Company E advised the Taxpayers of the need to seek an extension of time to convert Roth IRA B back to a traditional IRA. These facts are contained in an affidavit dated March 7, 2008, and signed by Individual D, a principal in Company E.

Taxpayers' tax return was prepared by Individual F, a certified public accountant who is a partner in Company G. The Taxpayers provided Individual F the "Tax Preparer Information" document and a copy of the Form 1099-R issued by Financial Institution C. Included in the "Tax Preparer Information" were the following: 1) a statement that a conversion from a traditional IRA to a Roth IRA took place on August 18, 2005; 2) a notation that the distribution reported on the Form 1099-R was converted to a Roth IRA; and 3) a schedule showing that the conversion on August 18, 2005 totaled Amount 1. However, in preparing the Taxpayers' joint return, Individual F interpreted Box 7 of Form 1099-R to mean that Amount 1 represented a normal distribution from IRA A and not a conversion to Roth IRA B. Individual F acknowledged that he was unaware of the references to "Roth Conversion" which are contained in the "Tax Preparer Information" document. These facts are contained in an affidavit dated March 20, 2008, and signed by Individual F.

Based on the foregoing facts and representations, you have requested the following ruling: that, pursuant to section 301.9100-3 of the Regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the failed Roth IRA conversion to a traditional IRA.

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 return for the year of contributions.

Section 1.408A-5, Q&A-2(c)(1) of the I.T. Regulations provides, in effect, that if the amount of the contribution being recharacterized was contributed to a Roth IRA and distributions or additional contributions have been made from or to that IRA at any time, then the net income attributable to the amount of a contribution being recharacterized is determined by allocating to the contribution a pro-rata portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula: $\text{Net Income} = \text{Contribution} \times (\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance}) / \text{Adjusted Opening Balance}$. The items in the above formula are defined in section 1.408A-5, Q&A-2(c)(2) of the I.T. Regulations.

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 modified AGI 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 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. Section 1.408A-4, Q&A-2, further provides, in summary, that an individual and his spouse must file a joint federal income tax return to convert a traditional IRA to a Roth IRA, and that the modified 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, 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, revenue ruling, revenue procedure, notice, or 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)) 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 the taxpayer's 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)(i) of the Regulations provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been made timely.

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 the Taxpayers' request for a ruling dated April 8, 2008, the authorized representative states that it is the position of the Taxpayers that the grant of the extension requested will not prejudice the interests of the Government in that the tax liability of the Taxpayers will be no lower than would have been the case if the election to recharacterize Roth IRA B to a traditional IRA had been made timely.

In this case, Taxpayer A provided to his tax return preparer (Individual F) information which showed Taxpayer A had converted Amount 1 from IRA A to Roth IRA B during tax year . Thus, while Taxpayer A was ineligible to convert Amount 1 from IRA A to Roth IRA B because Taxpayers' modified AGI for the tax year exceeded the \$100,000 limit under section 408A(c)(3)(B) of the Code, Taxpayer A relied on his professional advisors (Individual F in combination with Company E) to make the conversion, but neither Individual F nor Company E made, or advised Taxpayer A to make, a timely election to recharacterize under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations.

With respect to Taxpayers' 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 A acted reasonably and in good faith with respect to making the election to recharacterize the failed conversion as a traditional IRA. Specifically, the Service has concluded that Taxpayer A has met the requirements of clause (v) of section 301.9100-3(b)(1) of the Regulations and that granting relief would not prejudice the interests of the Government. Therefore, Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to so recharacterize. This ruling only applies to amounts converted from traditional IRA A to Roth IRA B and not any regular contributions to the 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 IRA A and Roth IRA B meet the requirements of 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 _____, _____, (I.D. # _____), at (_____) _____.

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

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cc: