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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 8 2003

UICs: 408.11-00
408.11-01
408A.00-00
9100.00-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Individual C:

IRA P:

IRA X:

Roth IRA Y:

IRA V:

Roth IRA W:

Company M:

Month 1:

Amount 1:

Amount 2:

Dear Mr. and Mrs. :

This is in response to the , letter, submitted by your authorized representative on your behalf, as supplemented by correspondence dated , (two pieces of correspondence), in which you request 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. Taxpayers A and B file joint Federal Income Tax Returns.

Taxpayer A maintained IRA P, a traditional individual retirement arrangement described in Code section 408(a), with Company M. During Month 1, 1998, Taxpayer A converted IRA P to a Roth IRA, Roth IRA Y, also with Company M. The amount converted was Amount 1 of which Amount 2 was taxable.

For years 1999 through 2001, Taxpayer A made yearly contributions to his Roth IRA Y. Additionally, for years 1999 through 2001, Taxpayer B made yearly contributions to her Roth IRA, Roth IRA W, also maintained with Company M.

During 1998, Taxpayers A and B's adjusted gross income exceeded the limits found in Code section 408A(c)(3)(B).

During 1999, Taxpayers A and B's adjusted gross income did not exceed the limits found at Code § 408A(c)(3)(C)(ii).

During both 2000 and 2001, Taxpayers A and B's adjusted gross income exceeded the limits found at Code § 408A(c)(3)(C)(ii).

Taxpayers A and B timely filed their calendar year joint 1998 Federal Income Tax Return.

With respect to the 1998 "conversion" of IRA P to Roth IRA Y, and with respect to their 2000 and 2001 yearly contributions to their Roth IRAs, Taxpayers A and B relied upon the advice of their stock broker, Individual C, an employee of Company M. Your authorized representative has asserted on your behalf that Individual C did not advise

either Taxpayer A or Taxpayer B of the adjusted gross income limit(s) on IRA conversions and yearly Roth IRA contributions found in Code § 408A.

Furthermore, your authorized representative has asserted on your behalf that, prior to the submission of this ruling request, the Internal Revenue Service had not notified Taxpayer A that he made an improper 1998 IRA conversion, or that either his 2000 or his 2001 Roth IRA contributions were improper. Furthermore, the Service has not notified Taxpayer B that either her 2000 or her 2001 Roth IRA contributions were improper.

During calendar year 2002, Taxpayer A recharacterized his Roth IRA Y by transferring his entire Roth IRA Y balance to traditional IRA X. Furthermore, during calendar year 2002, Taxpayer B recharacterized her Roth IRA W by transferring her entire Roth IRA W balance to traditional IRA V.

The amounts transferred from Roth IRAs Y and W (recharacterized amounts) included amounts representing Taxpayers A and B's calendar year 1999 contributions to said Roth IRAs and earnings (or less losses) thereon. As noted above, Taxpayers A and B were eligible to contribute to their Roth IRAs with respect to calendar year 1999.

It has been represented that, in conjunction with any grant of relief under this letter ruling, Taxpayers A and B will file an amended joint calendar year 1998 Federal Income Tax Return.

Based on the above, you, through your authorized representative, request the following letter rulings:

1. That, pursuant to section 301.9100-3 of the regulations, Taxpayers A and B were eligible to recharacterize their Roth IRAs, IRA Y and W, less amounts representing their calendar year 1999 contributions to their Roth IRAs (and earnings or less losses thereon), as traditional IRAs; and

2. the 1999 contributions made by Taxpayers A and B to their Roth IRAs (and earnings attributable thereto), which were transferred to traditional IRAs during calendar year 2002, constitute after-tax contributions to their traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the Internal Revenue 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 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, Question and Answer-6, describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that either has been contributed to a Roth IRA or 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, 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. Furthermore, Q&A-2(b) provides that in the case of a husband and wife who file a joint Federal Income Tax Return, the modified AGI is the modified AGI derived from the joint return using the couple's combined income.

Code section 408A(c)(3)(C)(ii) provides, in relevant part, provides that a married individual filing a joint Federal Income Tax Return may not contribute to a Roth IRA for a taxable year if his/her adjusted gross income for said year exceeds $150,000.

§ 1.408A-5 of the Income Tax Regulations, Q&A-2(a), provides guidance with respect to the calculation of income attributable to recharacterized amounts. (See also § 1.408-4(c)(2)(ii) of the regulations).

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 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 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 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 temporary 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.

Announcement 99-57, 1994-24 I.R.B. 50 (June 14, 1999) provided that a taxpayer who timely filed his/her 1998 Federal Income Tax Return would have until October 15, 1999 to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Announcement 99-104, 1999-44 I.R.B. 555 (November 1, 1999), provided that a taxpayer who timely filed his/her 1998 Federal Income Tax Return would have until December 31, 1999 to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Taxpayers A and B timely filed their 1998 Federal Income Tax Return. As a result, they were eligible for relief under either Announcement 99-57 or Announcement 99-104. However, as noted above, they missed the due dates set forth in the

Announcements. Therefore, it is necessary to determine if they are eligible for relief under the provisions of section 301.9100-3 of the regulations.

In this case, Taxpayer A was ineligible to convert his traditional IRA P to Roth IRA Y since his and Taxpayer B's adjusted gross income for calendar year 1998 exceeded $100,000. However, at the time of the conversions, Taxpayers A and B believed that Taxpayer A's traditional IRA P had been properly converted to a Roth IRA because they had been so advised by Individual C. Additionally, Taxpayer A's ineligibility to convert his IRA P to Roth IRA Y and his failure to timely recharacterize his Roth IRA were not discovered by the Service prior to Taxpayers A and B's filing this request for letter ruling.

With respect to calendar years 2000 and 2001, Taxpayers A and B were not eligible to make annual contributions to Roth IRAs Y and W, respectively, because their adjusted gross income for each year exceeded the limitations found at Code section 408A(c)(3)(C)(ii). However, Taxpayers A and B made said contributions because their financial advisor, Individual C, did not advise them of the Code limitations on permissible adjusted gross income.

Finally, as noted above, Taxpayers A and B were eligible to contribute to their Roth IRAs with respect to calendar year 1999.

With respect to your 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 you have acted reasonably and in good faith with respect to making the election to recharacterize your Roth IRA, as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clauses (i) and (v) of section 301.9100-3(b)(1) of the regulations. However, the Service concludes as such only with respect to Taxpayer A's 1998 conversion of traditional IRA P to Roth IRA Y and with respect to Taxpayers A and B's calendar year 2000 and 2001 contributions to Roth IRAs Y and W.

As noted above, Taxpayer A's and Taxpayer's B's calendar year 1999 contributions to their Roth IRAs were valid as their adjusted gross income for said year did not exceed the limitations found in Code § 408A(c)(3)(ii). Thus, § 301.9100 relief is not granted with respect to the calendar year 2002 recharacterizations of Roth IRAs Y and W to traditional IRAs X and V, respectively, to the extent said "recharacterizations" represent Taxpayers A and B's calendar year 1999 contributions to their Roth IRAs and earnings (or less losses) thereon.

Therefore, with respect to your first ruling request, the Service concludes as follows:

1. That, pursuant to section 301.9100-3 of the regulations, Taxpayers A and B's calendar year 2002 recharacterizations of their Roth IRAs Y and W are valid to the extent said recharacterizations encompassed Taxpayer A's calendar year 1998 conversion of his traditional IRA P and to the extent the recharacterization encompassed Taxpayer A's and Taxpayer B's calendar year 2000 and 2001 contributions to Roth IRA Y and Roth IRA W, respectively. As noted above, said relief does not encompass Taxpayers A and B's calendar year 1999 contributions to their Roth IRAs.

With respect to your second ruling request, Code § 219(b)(1) limits an individual's IRA contribution for a taxable year to the lesser of (A) $2,000 or (B) the amount equal to the compensation includible in the individual's gross income for such taxable year. Code § 408(o), in relevant part, imposes these limits on non-deductible IRA contributions for a taxable year.

Code § 408(d)(1) provides that amounts paid or distributed from an IRA shall be included in gross income by the payee or distributee in the manner provided under § 72.

As noted above, the amounts transferred from Taxpayers A and B's Roth IRAs Y and W to their traditional IRAs, IRAs X and V, that represented Taxpayer A's and Taxpayer B's calendar year 1999 contributions to their Roth IRAs Y and W are not eligible for § 301.9100 treatment. Thus, they constitute regular, annual, after-tax contributions to their traditional IRAs X and V, respectively, for calendar year 2002. As such, they are subject to the limits found in Code § 408(o).

Therefore, with respect to your second ruling request, we conclude as follows:

2. The 1999 contributions made by Taxpayers A and B to their Roth IRAs (and earnings attributable thereto), which were transferred to traditional IRAs during calendar year 2002, constitute after-tax contributions to their traditional IRAs

With further respect to the Service's conclusion to your second ruling request (which deals solely with the 1999 contributions to the Roth IRAs), pursuant to Code § 408(d)(4), to the extent, if any, the amounts transferred from their Roth IRAs to traditional IRAs by Taxpayers A and B represent excess contributions to the traditional IRAs, they must be withdrawn by the due date of their calendar year 2002 Federal Income Tax Return, including extensions, in order to avoid being subject to taxation under Code § 408(d)(1). In order to comply with Code § 408(d)(4), the withdrawal must be accompanied by income attributable to said contributions.

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 letter is directed only to the taxpayers that requested it. Section 6100(j)(3) of the Code provides that it may not be used or cited as precedent.

Please note that in conjunction with recharacterizing Taxpayers and B's Roth IRAs Y and W, Taxpayers A and B must file an amended calendar year 1998 Federal Income Tax Return consistent therewith if they have not already done so. Furthermore, they must file any additional tax returns necessary to comply with this letter ruling (if any).

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter ruling was prepared by , of this Branch. He can be reached at

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose