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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Index No. 9100.00-00

MAY 20 2003

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LEGEND:

Taxpayer A = ********

Taxpayer B = ********

IRA Y = ********

IRA Z = ********

Company M = ********

Sum N = ********

Sum O = ********

Sum P = ********

Dear ********:

This is in response to a letter dated March 14, 2003, submitted on your behalf by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "Regulations").

The following facts and representations have been submitted:

Taxpayer A maintained traditional IRA Y, an individual retirement arrangement described in section 408 of the Internal Revenue Code (the "Code"), with Company M. On April 11, 2000,

Taxpayer A opened Roth IRA Z with Company M and contributed SUM O for tax year 2000. However, when Taxpayer A opened Roth IRA Z, she was unaware that she was also authorizing Company M to convert her traditional IRA Y to a Roth IRA. The amount converted from traditional IRA Y was Sum N. Sum N was transferred to Roth IRA Z.

Taxpayer A became aware of Roth IRAs as a new type of retirement savings tool through the newspapers. She had invested in traditional IRA Y, sponsored by Company M, for many years and decided in 2000 to begin making contributions to a Roth IRA also sponsored by Company M. At the time she applied for Roth IRA Z, Company M representatives did not inform her of the Roth IRA income limitations. Taxpayer A is married to Taxpayer B. Their adjusted gross income for 2000 exceeded the limit found at section 408A(c)(3)(B) of the Code. Further, Taxpayer A did not understand that as she opened her Roth IRA Z, she was also authorizing Company M to convert her traditional IRA Y to Roth IRA Z. This was not Taxpayer A's intention and she was not told that this transaction would cause the balance in her traditional IRA Y to become taxable in 2000.

Taxpayer A and Taxpayer B's 2000 joint federal income tax return was timely filed in the first week of April 2001. Taxpayers A and B had an accountant prepare their 2000 federal income tax return. Taxpayer A has no recollection of receiving any Forms 1099-R from Company M reporting the traditional IRA Y as taxable in 2000. As Taxpayer A did not have a full understanding of the transaction, she did not expect to receive these forms. As a result, Taxpayer A did not furnish these forms to her accountant, and Taxpayer A and Taxpayer B's Form 1040 did not report the traditional IRA Y balance of Sum N as income.

At the time Taxpayer A and Taxpayer B filed their 2000 joint federal income tax return, neither of them was aware of the income limitations in Code section 408A(c)(3)(B). In addition, neither of them was aware that Taxpayer A's traditional IRA Y had been converted to Roth IRA Z or that the balance of traditional IRA Y upon conversion of the IRA to Roth IRA Z is includible in income.

On May 5, 2001, Taxpayer A attended a retirement seminar sponsored by her employer. During this seminar, Taxpayer A learned about Roth IRA income limitations for the first time. She called Company M to inquire about her possible Roth IRA ineligibility due to income limitations. Company M's representative told her that she may be able to change Roth IRA Z to a traditional IRA and he would send her the form to do so. Taxpayer A never received the form. When Taxpayer A did not receive the form, she contacted Company M again, at which time she was told it was too late to convert Roth IRA Z to a traditional IRA.

Taxpayer A visited Company M's Investor Center, regarding her ineligibility for Roth IRA Z. Taxpayer A spoke with several Company M representatives in person and via telephone to no avail. However, in her discussions with Company M representatives, she learned for the first time, that her traditional IRA Y had been converted to Roth IRA Z in 2000. One Company M

representative suggested she call a Company M Roth IRA specialist to discuss the matter. None of Company M's representatives could explain why Taxpayer A was not informed about the Roth IRA income limitations at the time Company M accepted her application for Roth IRA Z.

After speaking with Company M's Roth IRA specialist, Taxpayer A met with a financial planner who suggested she discuss the issue with her tax preparer. On or about September 13, 2002, Taxpayer A spoke with her tax preparer, which resulted in this request for an extension.

Taxpayer A subsequently timely recharacterized her 2001 contribution to Roth IRA Z to a traditional IRA. The trustee-to-trustee transfer in the amount of Sum P was made on December 26, 2001.

Taxpayer A and Taxpayer B's 2000 joint federal income tax return was timely filed in the first week of April 2001. This request for relief under section 301.9100-3 of the Regulations was submitted prior to the Service's discovering Taxpayer A's ineligibility to convert her traditional IRA Y to Roth IRA Z. Calendar year 2000 is not a "closed" tax year.

Based on the above facts and representations, you request a ruling that, pursuant to 301.9100-3 of the Regulations, Taxpayer A be granted a period not to exceed six months from the date of this ruling letter to recharacterize her Roth IRA Z to a traditional IRA, which recharacterization would include the amount converted from Taxpayer A's traditional IRA Y and the 2000 contribution of Sum O.

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 (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, Question and Answer –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-3, Question and Answer -3 of the I.T. Regulations provides, in part, that the maximum amount of regular contributions that can be made to a Roth IRA is phased out between certain levels of modified adjusted gross income. For an individual who is married and files a joint return, the dollar amount is phased out between modified adjusted gross income of $150,000 and $160,000. An individual who is married and files a joint return is not eligible to make a regular contribution to a Roth IRA if the couple's combined modified adjusted gross income is $160,000 or more.

Section 1.408A-4, Question and Answer –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 a taxable year. Section 1.408A-4, Question and Answer –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 subject to the $100,000 limit for the taxable year is the modified adjusted gross income 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 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 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 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 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 upon 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 was not eligible to convert her traditional IRA Y into Roth IRA Z since Taxpayer A's and Taxpayer B's combined modified adjusted gross income for 2000 exceeded $100,000. Further, Taxpayer A was not eligible to make a regular contribution to a Roth IRA. Taxpayers A and B timely filed their joint 2000 federal income tax return. Taxpayer A was unaware that traditional IRA Y had been converted to Roth IRA Z until she visited Company M's Investor Center in 2001. Calendar year 2000 is not a "closed" tax year. Therefore, it is necessary to determine whether Taxpayer A is eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Taxpayer A was ineligible to convert her traditional IRA Y to Roth IRA Z. However, she was unaware of the conversion until 2001. Taxpayer A was not aware of an income limitation for a Roth IRA conversion or that she was ineligible to make a regular contribution to a Roth IRA. Further, Taxpayer A was not advised by Company M that she was ineligible to make regular contributions to a Roth IRA, ineligible to convert traditional IRA Y to Roth IRA Z or of the income limitations. Upon realizing traditional IRA Y had been converted to Roth IRA Z and learning that she was ineligible for the conversion and ineligible to make regular contributions to a Roth IRA, Taxpayer A requested an extension of time to recharacterize her Roth IRA Z to a traditional IRA.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of the 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 Z as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clauses (i), (iii), and (v) of section 301.9100-3(b)(1) of the Regulations. Therefore, you are granted an extension of 60 days from the date of the issuance of this letter ruling to so recharacterize.

This ruling assumes that the above IRAs qualify under section 408 of the Code at all relevant times.

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 taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

If you have any questions regarding this ruling, please contact ********** T:EP:RA:T2, at ********

Sincerely,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose Form 437