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

MAR 17 2006

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Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =

Taxpayer B =

Company C =

Amount D =

Amount E =

Country F =

Country G =

Amount H =

Amount I =

IRA X =

IRA Y =

Roth IRA X =

Dear :

This is in response to a letter dated March 28, 2005, as supplemented by correspondence dated December 23, 2005, and January 5, February 6, and March 6, 2006, and a telephone call on March 9, 2006, in which you, through your authorized representative, requested relief under section 301.9100-3 of the Procedure and Administration Regulations (regulations).

The following facts and representations support your ruling request.

Taxpayer A is married to Taxpayer B. Taxpayer A is 71 years old and Taxpayer B is 65 years old. For tax year , Taxpayers A and B filed a joint Federal Income Tax Return (Form 1040).

Taxpayer A previously maintained two traditional Individual Retirement Arrangements (IRAs), IRA X and IRA Y. On April 2, 2003, IRA X and IRA Y were converted to a Roth IRA, Roth IRA X. The amounts converted were Amount D from IRA X and Amount E from IRA Y. Due to the conversion, Amount D and Amount E were taxable. In addition to the conversion, Taxpayer A made a contribution to Roth IRA X on for tax year .

At the time of the conversions of IRA X and IRA Y into Roth IRA X and the annual contribution to Roth IRA X, Taxpayer A believed that he was qualified to convert IRA X and IRA Y into Roth IRA X described in section 408A of the Internal Revenue Code (Code).

In January 2005, Company C, Taxpayer A's former employer, issued a Form W-2C to him. This Form W-2C was issued to report additional income that directly related to Taxpayer A's previous assignment in Country F with Company C. The additional income related to Country F tax payments made by Company C which are considered assignment-related imputed income. Taxpayer A had repatriated to Country G in April 2001. Prior to the receipt of the Form W-2C, Taxpayer A's and B's modified adjusted gross income for tax year was Amount H, which is an amount that is less than $100,000. After the receipt of the Form W-2C, Taxpayer A's and B's modified adjusted gross income for calendar year is Amount I, which is an amount that is more than $100,000. As a result of the Form W-2C, since Taxpayer A's and B's modified adjusted gross income for calendar year exceeded $100,000, the conversion of IRA X and IRA Y into Roth IRA X was invalid.

Taxpayers A and B timely filed their calendar year joint Federal Income Tax Return. To date, Taxpayer A has not recharacterized his Roth IRA X as a traditional IRA.

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 Taxpayers A or B that Taxpayer A had made an improper IRA conversion.

Based on the above facts and representations, Taxpayers A and B, through their authorized representative, request a ruling that they be granted an extension of 60 days, measured from the date of this letter ruling, to recharacterize Taxpayer A's Roth IRA X, to the extent it consists of Amounts D and E and earnings attributable thereto, as a traditional IRA pursuant to section 301.9100-3 of the regulations.

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 (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 to 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 of the Regulations, 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 specific information that is sufficient to effect the recharacterization; and (3) the trustee must make the transfer.

Section 408A(c)(3)(B) of the Code provides, in relevant part, that an individual with modified 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 IRA other than a Roth IRA during that taxable year.

Section 1.408A-4 of the Regulations, 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. Q&A-2(b) further provides that a married individual is permitted to convert a traditional IRA to a Roth IRA only if the individual and his/her spouse file a joint Federal Income Tax Return. Furthermore, the modified adjusted gross income is the modified adjusted gross income derived from the joint return using the couple's combined income.

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

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 Internal Revenue Service on or after December 31, 1997. Section 301.9100-1(c) of the regulations provides that the Commissioner of the 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 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 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 if (i) its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) 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.

In this case, Taxpayer A and Taxpayer B timely filed their joint Federal Income Tax Return. When they filed their Federal Income Tax Return, Taxpayers A and B were not aware that Taxpayer A was ineligible to convert his traditional IRAs X and Y to Roth IRA X because they were unaware that assignment-related imputed income from employment services he provided to Company C prior to May 2001 would be taxable income in . Furthermore, the Form W-2C which informed Taxpayer A that he had such taxable income was not issued to him until January .

Taxpayers A and B did not become aware that Taxpayer A's conversion of IRA X and IRA Y to Roth IRA X did not comply with the requirements of section 408A(c)(3) of the Code and interpreting regulations until their January receipt of the Form W-2C. At that point, the time period prescribed by section 408A(d)(6) of the Code had expired. Therefore, it is necessary to determine if Taxpayers A and B are eligible for relief under section 301.9100-3 of the regulations.

In this case, Taxpayers A and B filed this request for relief under section 301.9100 of the regulations shortly after discovering that Taxpayer A was ineligible to convert his traditional IRAs X and Y to Roth IRA X because his conversion was tainted due to their modified adjusted gross income exceeding permissible limits. Furthermore, the Form W-2C which contained the taxable income information that caused their modified adjusted gross income to exceed said limit was not available to them at the time they filed their Federal Income Tax Return.

Thus, with respect to Taxpayers A and B's request for relief, we believe that, based on the information and the representations contained therein, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have been met, and Taxpayers A and B acted reasonably and in good faith with respect to requesting an extension of time in order to recharacterize Roth IRA X as a traditional IRA. Specifically, we conclude that Taxpayers A and B have met the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the regulations. Therefore, Taxpayers A and B are granted an extension of time not to exceed 60 days as measured from

the date of this letter ruling to recharacterize Amounts D and E held in Roth IRA X, plus earnings attributable thereto, as a traditional 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 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.

Please note that in recharacterizing Taxpayer A's Roth IRA X as a traditional IRA, Taxpayers A and B must file an amended calendar year Federal Income Tax Return consistent therewith if they have not already done so.

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 wish to inquire about this ruling, please contact . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan

, Manager
Employee Plans Technical Group 3

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