

Department of the Treasury  
Internal Revenue Service  
Washington, D.C. 20224

200625041

Uniform Issue List: 9100.00-00

MAR 27 2006

T:EP:RA:T3

Legend:

Taxpayer A =  
Taxpayer B =  
IRA X =  
Roth IRA Y =

Roth IRA Z =  
Company M =  
Amount D =  
Amount E =  
Amount F =  
Amount G =  
CPA H =

Dear :

This is in response to a letter dated March 15, 2005, as supplemented, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). You submitted the following facts and representations in connection with your request.

Taxpayer A is married to Taxpayer B. For calendar years            and  
Taxpayers A and B filed joint Federal income tax returns, Federal Forms 1040.

Taxpayer A maintained IRA X, a traditional individual retirement arrangement as described in section 408 of the Internal Revenue Code, ("Code"), with Company M. On March 27, 2003 and April 7, 2003, on the advice of his financial advisor at Company M, Taxpayer A transferred the entire balance of IRA X, Amount D, to a newly opened Roth IRA Y. On March 27, 2003, on the advice of his advisor, Taxpayer A deposited Amount E into Roth IRA Y as an annual contribution for calendar year            and an additional Amount E into the same Roth IRA account as an annual contribution for calendar year            . Also, on the advice of said

advisor, on March 27, 2003, Taxpayer B opened Roth IRA Z, and deposited Amount E into this account as an annual contribution for calendar year        and also deposited Amount E into the account as an annual contribution for calendar year        Taxpayers A and B and their advisor at Company M believed that Taxpayers A and B were eligible to make annual contributions to their respective Roth IRA accounts for calendar year        that Taxpayer A would be eligible to convert his IRA X to a Roth IRA during        and that Taxpayers A and B would be eligible to make annual contributions to their respective Roth IRAs for calendar year       

As shown on their Federal Form 1040, U.S. Individual Income Tax Return, filed with respect to calendar year        Taxpayers A and B's        adjusted gross income was Amount F which exceeded the limit found in Code sections 408A(c)(3)(A) and 408A(c)(3)(C)(ii). The        Federal income tax return for Taxpayers A and B was prepared on a "married filing jointly" basis by their certified public accountant ("CPA"), CPA H. The return was timely filed, including extensions, on or about October 15, 2000. Since CPA H lacked information regarding Taxpayers A and B's        contributions to their Roth IRAs, he was unable to make Taxpayers A and B aware that their income for calendar year        exceeded the limitation found in Code sections 408A(c)(3)(A) and 408A(c)(3)(C)(ii).

As shown on their Federal Form 1040, U.S. Individual Income Tax Return, filed with respect to calendar year        Taxpayers A and B's        adjusted gross income, excluding Amount D, was Amount G which exceeded the limits found in Code sections 408A(c)(3)(A), 408A(c)(3)(C)(ii) and 408A(c)(3)(B). The Federal income tax return for Taxpayers A and B was also prepared by CPA H. Information regarding the conversion of Taxpayer A's traditional IRA to a Roth IRA during        and the annual Roth IRA contributions by both spouses for calendar year        was provided by Taxpayers A and B to CPA H in        Taxpayer A's conversion was reported on the        Federal income tax return as filed, as were Taxpayers A and B's contributions to the Roth IRAs for calendar year        The preparation of the income tax return was completed on October 13,       , and was timely filed by October 15,

With respect to calendar year        the modified adjusted gross income of Taxpayers A and B exceeded the limitations in Code section 408A(c)(3). As a result, Taxpayer A was not eligible to convert IRA X to a Roth IRA, and Taxpayers A and B were not eligible to make annual contributions to their respective Roth IRA accounts. CPA H failed to advise Taxpayer A that he was not eligible during        to convert IRA X to a Roth IRA account, and also failed to advise Taxpayers A and B that they were not eligible to make annual contributions during        to Roth IRAs. Taxpayers A and B were unaware of the income limitations that applied to these transactions and relied on CPA H to advise them regarding these transactions.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the regulations, Taxpayers A and B are granted a period not to exceed sixty days from the date of this ruling letter to recharacterize their and annual contributions to their Roth IRAs as contributions to traditional IRAs, and that Taxpayer A is granted a period not to exceed sixty days as measured from the date of this letter ruling to recharacterize his Roth IRA Y as a traditional IRA account.

With respect to your ruling requests, 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 originally 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 & 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)(B) provides that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) 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 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 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.

Code sections 408A(c)(3)(a) and (c)(3)(C) provide, in relevant summary, that a married individual filing a joint return may not make annual contributions to a Roth IRA for a taxable year if the adjusted gross income (excluding amounts distributed from a traditional IRA and included in gross income pursuant to Code section 408(d)(3)) shown on his/her Federal Form 1040 for said taxable year exceeds \$160,000.

Section 1.408A-3, Q&A-3(b), of the I.T. Regulations provides, in relevant part, that a married individual filing a joint return may not make contributions to a Roth IRA during a taxable year if his/her adjusted gross income for said taxable year exceeds \$160,000.

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) 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 Internal Revenue Service (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 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 during \_\_\_\_\_ to convert his traditional IRA X into a Roth IRA since the combined modified adjusted gross income of Taxpayer A and his spouse, Taxpayer B, exceeded \$100,000. However, he missed the deadlines to recharacterize his Roth IRA Y as a traditional IRA provided under the Code and regulations because he was unaware of the need to recharacterize Roth IRA Y back into a traditional IRA until the year \_\_\_\_\_ when a tax professional advised him that he was not eligible during \_\_\_\_\_ to convert IRA X to a Roth IRA.

Additionally, Taxpayers A and B were not eligible to make annual contributions during \_\_\_\_\_ and \_\_\_\_\_ to Roth IRAs. As above, Taxpayers A and B were not aware at the time(s) they were contributing to their Roth IRAs that they were ineligible to do so.

Taxpayers A and B's ruling requests require the Internal Revenue Service to determine whether they are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A was ineligible to convert his IRA X to Roth IRA Y in \_\_\_\_\_, and although Taxpayers A and B were ineligible to make annual Roth IRA contributions for years \_\_\_\_\_ and \_\_\_\_\_ they were unaware of these facts until the year \_\_\_\_\_ and their lack of awareness was primarily based upon their reliance on the advice of their financial advisor and secondarily based upon the advice of CPA H. Upon realizing their mistakes, Taxpayers A and B submitted this request for relief under section 301.9100 to the Service before the Service discovered Taxpayer A's failure to make a timely election to recharacterize Roth IRA Y back to a traditional IRA.

Under the set of circumstances described above, Taxpayers A and B satisfy the requirements of section 301.9100-3(b)(1) of the regulations. Accordingly, we rule that, pursuant to clauses (i) and (v) of 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 Roth IRA Y as a traditional IRA. Additionally, we conclude that, pursuant to clauses (v) of section 301.9100-3 of the regulations, Taxpayers A and B are granted a period not to exceed 60 days from the date of this letter to recharacterize their \_\_\_\_\_ and \_\_\_\_\_ contributions to their Roth IRAs as contributions to traditional IRAs.

Please note that Taxpayers A and B's ability to recharacterize their \_\_\_\_\_ and \_\_\_\_\_ Roth IRA contributions to traditional IRAs on a pre-tax basis are subject to the rules found in Code section 219 (g) (if applicable). Also note the availability

of contributing amounts to traditional IRAs on an after-tax basis as described in Code \*section 408(o).

This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A at all relevant times.

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

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact I.D. #  
at 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 letter ruling  
Notice of Intention to Disclose