COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Uniform Issue List: 9100.00-00 408A.00-00

T:EP:RA:T3

Legend:

Taxpayers A:

Taxpayer B:

IRA X:

IRA Y:

Financial Institution I:

Roth IRA X:

Roth IRA Y:

Company H:

Date 1:

Date 2:

Amount M:

Amount N:

Amount O:

Financial Advisor H:

Attorney R:

Dear :

This is in response to letters dated March 21, 2011, May 6, 2011, October 12, 2011, February 13, 2012, and May 25, 2012, in which your authorized representative requests relief under section 301.9100-3 of the Procedure and Administration Regulations (P&A Regulations). You submitted the following facts and representations in connection with your request.

Taxpayer A and Taxpayer B (the Taxpayers) are married and file a joint Federal income tax return annually. Taxpayer A maintained IRA X and Taxpayer B maintained IRA Y, both with Financial Institution I.

In April of 2009, Taxpayer A opened Roth IRA X with Financial Institution I. On Date 1, Taxpayer A converted Amount M of IRA X to Roth IRA X. Roth IRA X has remained untouched since the conversion. In Year 2, Forms 1099-R and 5498 were issued for Taxpayer A's Roth IRA conversion.

In April of 2009, Taxpayer B opened Roth IRA Y, at Financial Institution I. On Date 1, Taxpayer B converted Amount N of IRA Y to Roth IRA Y. Roth IRA Y has remained untouched since the conversion. In Year 2, a Form 1099-R was issued for Taxpayer B's Date 1, Roth IRA conversion.

In 2009, Taxpayer A was reading articles and heard discussions describing the end of the income limitation for converting to a Roth IRA and highlighting the benefits of performing such a conversion.

Taxpayer A was under the mistaken impression that the income limitation was eliminated in 2009, rather than in 2010. Because the articles that Taxpayer A read generally indicated that it was a good time to perform a conversion due to the decline in the stock market, Taxpayer A decided to go forward with performing the Roth IRA conversions.

Taxpayers A consulted with Financial Advisor H in 2009, and discussed that Taxpayer A was considering performing a Roth IRA conversion. The Taxpayer's investments are handled by Taxpayer A's uncle who is a financial advisor, Financial Advisor H. Financial Advisor H has submitted an affidavit in which he represents that Financial Advisor H has been a professional financial advisor since 1994, that he has been advising Taxpayers A and B since 1998, that Taxpayers A and B have relied upon his advice since 1998, that in 2009 Taxpayer A discussed with him the idea of a Roth conversion, that he never informed Taxpayer A of the $100,000 limitation which applied in year 2009, that his failure to inform taxpayer A was an oversight on his part, that Taxpayers A and B had no independent understanding of the $100,000 limitation, and that

they relied on him to inform them if a Roth conversion was either inadvisable or not allowable. Taxpayers represent that had they been aware of such income limitation, they would have waited until 2010 to perform the Roth IRA conversions.

Taxpayer A handles the tax matters for him and his wife. He prepares their tax returns annually without the assistance of an accountant or paid preparer. In 2009, Taxpayer A utilized Company H's software to prepare their income tax return. Due to a keystroke or entry error on the part of Taxpayer A when completing the 2009 Form 1040 in the Company H software, the Roth IRA conversion amounts he placed on line 15a did not carry over to line 15b. Taxpayer A did not realize this error had occurred when he filed their tax return. Because of this error, the Taxpayers received an Internal Revenue Service (IRS) Notice of Deficiency (Notice) on Date 2, increasing their 2009 Retirement Income Taxable by Amount O, which is the sum of Amount M and N.

Upon receipt of the IRS Notice, Taxpayer A immediately contacted Attorney R for assistance. It was during these conversations with Attorney R that Taxpayer A first discovered that he and his wife had been ineligible to make the 2009 Roth conversions because their modified adjusted gross income (MAGI) exceeded $100,000 in 2009.

Neither Taxpayer A nor Taxpayer B is a tax professional nor do they have experience in dealing with Roth IRAs.

Taxpayer A became aware of the time limits found in Announcements 99-57 and 99-104 only after the recharacterization time limits had already expired.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayers A and B are granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRAs X and Y as traditional IRAs.

With respect to your ruling requests, section 408A(d)(6) of the Code and section 1.408A-5 of the Federal Income Tax Regulations (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. 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, 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.

For years prior to 2010, section 408A(c)(3)(B) of the Code provides, in relevant part, 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 relating to years prior to 2010, provides that an individual with MAGI 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 income tax return to convert a traditional IRA to a Roth IRA, and that the MAGI subject to the $100,000 limit for a taxable year is the MAGI derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the P&A 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 P&A 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 P&A 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 P&A 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 P&A 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.

The information presented and documentation submitted by Taxpayer A and Taxpayer B is consistent with their assertion that their failure to elect to recharacterize Roth IRA X and Roth IRA Y on or before the date prescribed by law, including extensions for filing their Federal Income Tax Return for the year of conversion, was caused by their lack of awareness of the necessity of making an election as a result of their reliance on Financial Advisor H to handle their investments.

Upon becoming aware of the need to make the election, Taxpayers A and B, in a timely manner, submitted this request for relief under section 301.9100 of the P&A Regulations. The request for relief was submitted prior to the Service discovering the failure to make a timely election. The IRS Notice Taxpayers A and B received was not a discovery by the Service of the failure to make the timely election.

Under the set of circumstances described above, Taxpayers A and B satisfy the requirements of section 301.9100-3(b)(1) of the P&A Regulations. Accordingly, we rule that, pursuant to clauses (i), and (iii) of section 301.9100-3 of the P&A Regulations, Taxpayers A and B are granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA X and Roth IRA Y as traditional IRAs.

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
Please address all correspondence to
SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc