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

200208036

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIL No.: 9100.00-00

NOV 28 2001

T:EP:RA:T1

Legend :

Taxpayer A.....

IRA V.....

IRA X.....

Company M.....

Company O.....

Sum N.....

Dear :

This is in response to a letter dated May 14, 2001, as supplemented by correspondence dated September 21, 2001, and November 2, 2001, submitted 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 were submitted in connection with your request.

Taxpayer A maintained IRA V, an individual retirement arrangement described in section 408(a) of the Internal Revenue Code (the "Code"), with Company O. In 1999, Taxpayer A converted IRA V, a traditional IRA, to a Roth IRA, IRA X, with Company M via a rollover contribution. The amount rolled over from IRA V to IRA X was Sum N. Taxpayer A timely filed her calendar year 1999 federal Income Tax Return. With respect to calendar year 1999, Taxpayer A's adjusted gross income exceeded the limit found in section 408A(c)(3)(B).

Taxpayer A engaged a tax preparer to prepare her 1999 federal Income Tax Return and was not advised that her modified adjusted gross income for 1999 exceeded the $100,000 limit found in Code section 408A(c)(3)(B) until the preparation of her 2000 calendar year return. Consequently, Taxpayer A was unaware that she was ineligible to establish a Roth IRA. During the preparation of her 2000 year return, her ineligibility for the 1999 Roth conversion was discovered. Taxpayer A will recharacterize IRA X to a traditional IRA upon the granting of

relief under section 301.9100-3 of the regulations. This request for relief was submitted prior to the Service's discovering Taxpayer A's ineligibility to convert her traditional IRA into a Roth IRA.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed six months from the date of this ruling letter to recharacterize IRA X to a traditional IRA.

With respect to your request for relief, 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, 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.

Code section 408A(c)(3) 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.

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 to convert IRA V to a Roth IRA since her modified adjusted gross income for 1999 exceeded $100,000. Taxpayer A timely filed her 1999 federal income tax return. Therefore, it is necessary to determine whether she is eligible for relief under the provisions of section 301.9100-3 of the regulations.

Taxpayer A was not aware of her ineligibility to convert her traditional IRA , IRA V, into a Roth IRA, IRA X, until the preparation of her 2000 year tax return. Upon realizing her mistake, Taxpayer A requested relief from the Service before the Service discovered her ineligibility to convert IRA V into a Roth IRA. The 1999 taxable year is not closed under the statute of limitations. Thus, Taxpayer A satisfies the requirements of clauses (i), (iii) and (v) of section 301.9100-3(b)(1) of the regulations. Accordingly, you are granted an extension of six months from the date this letter is issued to recharacterize IRA X to a traditional IRA.

This letter assumes that IRAs V and X qualify as IRAs within the meaning of Code section 408 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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. Should you have any concerns regarding this letter, please contact .

Sincerely yours,

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

cc:

Enclosures:
Deleted copy of letter
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