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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN - 2 2002

200213034

UIC: 9100.00-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

IRA X:

IRA Y:

Company M:

Law Firm N:

Month 1:

Month 2:

Month 3:

Date 4:

Date 5:

Country K:

240

Dear Dr. and Mrs.

This is in response to the November 5, 2001, letter, submitted by your authorized representative on your behalf, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations. The following facts and representations support your ruling request.

Taxpayer B maintained IRA X, an individual retirement arrangement described in section 408(a) of the Internal Revenue Code, with Company M. During Month 1, 1998, Taxpayer B converted IRA X to a Roth IRA, IRA Y, also with Company M.

At the time of the IRA conversion referenced above, Taxpayer B and Taxpayer A, Taxpayer B's husband, resided in Country K. Taxpayer A advised Taxpayer B to convert her IRA X to Roth IRA Y because Taxpayer A believed that a conversion of a traditional IRA to a Roth IRA was valid as long as the joint taxable income of a married couple did not exceed $100,000. Taxpayers A and B believed, during Month 1, 1998, that their 1998 taxable income would not exceed $100,000.

Although Taxpayers A and B received an extension of time to file their calendar year 1998 Federal Income Tax Return, they did not file said 1998 return on a timely basis.

During either Month 2 or Month 3, 2000, Taxpayer A drafted his 1998 Federal Income Tax Return. While drafting said return, Taxpayer A discovered that eligibility to convert a traditional IRA to a Roth IRA was dependent on a married couple's adjusted gross income and not their taxable income. Furthermore, in the process of drafting the 1998 Federal Tax Return, Taxpayer A realized that his and Taxpayer B's 1998 adjusted gross income probably exceeded $100,000.

On Date 4, 2000, Taxpayers A and B retained Taxpayer C to prepare their joint 1998 Federal Income Tax Return. Taxpayer C confirmed that Taxpayers A and B's adjusted gross income for 1998 exceeded $100,000.

On Date 5, 2000, Company M advised Taxpayer B that it could not recharacterize her Roth IRA Y to a traditional IRA.

During calendar year 2001, Taxpayers A and B ascertained that the Internal Revenue Service had issued guidance with respect to the applicability of relief under section 301.9100-3 of the Procedure and Administrative Regulations to Roth IRA recharacterizations. Law Firm N was subsequently retained by Taxpayers A and B to assist them with respect to the recharacterization of Roth IRA Y. This ruling request was then filed by Law Firm N on behalf of Taxpayers A and B.

This request for relief under section 301.9100-3 of the Procedure and Administration Regulations was filed with the Internal Revenue Service prior to the Service's discovering that Taxpayer B was not eligible to convert her IRA X to Roth IRA Y and prior to the Service's discovering that Taxpayer B had not timely recharacterized her Roth IRA Y as a traditional IRA. As of the date of this ruling request, Taxpayer B's Roth IRA Y had not been recharacterized.

As noted above, Taxpayers A and B did not timely file their calendar year 1998 Federal Income Tax Return. 1998 is not a "closed" tax year.

Based on the above, you, through your authorized representative, request the following letter ruling:

> That, pursuant to section 301.9100-3 of the regulations, Taxpayer B is granted a period not to exceed six months from the date of this ruling letter to recharacterize her Roth IRA, IRA Y, as a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the Internal Revenue Code and section 1.408A-5 of the Income Tax 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, 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.

242

Section 1.408A-4, 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. Section 1.408A-4, Q&A-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 a taxable year is the modified AGI derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Procedure and Administration Regulations, in general, 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 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 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 temporary 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 temporary 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.

Announcement 99-57, 1994-24 I.R.B. 50 (June 14, 1999) provided that a taxpayer who timely filed his/her 1998 Federal Income Tax Return would have until October 15, 1999 to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Announcement 99-104, 1999-44 I.R.B. 555 (November 1, 1999), provided that a taxpayer who timely filed his/her 1998 Federal Income Tax Return would have until December 31, 1999 to recharacterize an amount that had been converted from a traditional IRA to a Roth IRA.

Taxpayers A and B did not timely file their 1998 Federal Income Tax Return. As a result, Taxpayer B was ineligible for relief under either Announcement 99-57 or Announcement 99-104. Therefore, it is necessary to determine if she is eligible for relief under the provisions of section 301.9100-3 of the regulations.

In this case, Taxpayer B was ineligible to convert her IRA X to Roth IRA Y since her and Taxpayer A's adjusted gross income exceeded $100,000. However, at the time of the conversion and until she discovered otherwise during calendar year 2000, Taxpayer B believed that her IRA X had been properly converted to a Roth IRA, IRA Y. Furthermore, Taxpayer B's ineligibility to convert her IRA X to Roth IRA Y and her failure to timely recharacterize her Roth IRA Y were not discovered by the Service prior to her filing this request for letter ruling.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of 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 as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the regulations.

Therefore, with respect to your ruling request, the Service concludes as follows:

That, pursuant to section 301.9100-3 of the regulations, Taxpayer B is granted a period of time, not to exceed six months from the date of this letter ruling, to recharacterize her Roth IRA Y to 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 letter is directed only to the taxpayer that requested it. Section 6100(j)(3) of the Code provides that it may not be used or cited as precedent.

Please note that in conjunction with recharacterizing Taxpayer B's Roth IRA Y, Taxpayers A and B must file a calendar year 1998 Federal Income Tax Return consistent therewith.

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

This letter ruling was prepared by
He can be reached at

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

245