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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200225047

MAR 29 2002

Uniform Issue List: 9100.00-00

T:EP:RA:T4

Legend:

Taxpayer A=

Taxpayer B=

IRA U=

IRA V=

IRA W=

IRA X=

IRA Y=

274

Dear :

This is in response to the January 7, 2002 letter, submitted by your authorized representative, 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 A and Taxpayer B (collectively "Taxpayers") are married. Taxpayer A maintained IRA U and Taxpayer B maintained IRA V and IRA W, individual retirement arrangements described in section 408(a) of the Internal Revenue Code. During calendar year 1998, Taxpayer A converted IRA U, a traditional IRA account, to a Roth IRA account, IRA X. During calendar year 1998, Taxpayer B converted IRA V and IRA W, traditional IRA accounts, to Roth IRAs, IRA Y and IRA Z, respectively.

At the time of the conversions and throughout calendar year 1998, Taxpayers believed that they were qualified to make the conversions described above under Code section 408A.

Taxpayers timely filed their calendar year joint 1998 Federal Income Tax Return.

In early 2000, Taxpayers sought professional advice from an independent accountant. It was only then that Taxpayers found out that they were ineligible to convert their traditional IRAs to Roth IRAs in 1998. Apparently, when Taxpayer A had prepared the Taxpayers 1998 Federal Income Tax Return using a home computer tax software package, it did not alert him to the fact that Taxpayers had exceeded the adjusted gross income (AGI) limit found at section 408A(c)(3)(B) of the Code and thus caused Taxpayers to be ineligible to convert their traditional IRAs to Roth IRAs in 1998. Although Taxpayers were aware of the AGI limit, they had thought that their combined AGI would be under the limit. The accountant informed Taxpayers that since they were ineligible to convert altogether, the conversions could not have occurred and, incorrectly advised them that, therefore, the conversions would be treated as if they had not occurred.

In July 2000, Taxpayer A requested that the IRA manager move Taxpayers' funds back from the Roth IRAs to traditional IRAs. At that time, the fund manager indicated that the time had elapsed for Taxpayers to recharacterize their Roth IRAs and that they could

not recharacterize unless proper authorization was obtained.

In May 2001, Taxpayer A wrote a letter to the IRS office in Pittsburgh, Pennsylvania and, after a series of communications, found out that Taxpayers could submit a request for a private letter ruling. Taxpayers met with their taxpayer representative initially in October 2001 and shortly thereafter filed a request for this letter ruling.

Prior to being contacted by the Taxpayers directly, the Internal Revenue Service had not discovered Taxpayers' failure to recharacterize.

As of the date of this ruling request, Taxpayer A had not recharacterized his Roth IRA, IRA X, as a traditional IRA, and Taxpayer B had not recharacterized her Roth IRAs, IRA Y and IRA Z, as traditional IRAs.

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 A is granted a period not to exceed six months from the date of this ruling letter to recharacterize his Roth IRA, IRA X, to a traditional IRA. Likewise Taxpayer B is granted a period not to exceed six months from the date of this ruling letter to recharacterize her Roth IRAs, IRA Y and IRA Z, to traditional IRAs.

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.

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 Income 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(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)) 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 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.

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 timely filed their 1998 Federal Income Tax Return. As a result, they were eligible for relief under either Announcement 99-57 or Announcement 99-104. However, they missed the deadlines found in said Announcements. Therefore, it is necessary to determine if they are eligible for relief under the provisions of section 301.9100-3 of the regulations.

In this case, Taxpayer A was ineligible to convert his IRA U to Roth IRA X, and Taxpayer B was ineligible to convert her IRA V to Roth IRA Y and IRA W to Roth IRA Z, since their adjusted gross income exceeded $ 100,000. However, until they discovered otherwise, Taxpayers believed that they were eligible to convert their IRA U, IRA V, and IRA W to Roth IRAs. Taxpayers filed this request for section 301.9100 relief after discovering that they were ineligible to convert IRA U, IRA V, and IRA W to Roth IRAs. Calendar year 1998 is not a "closed" tax year.

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 IRAs as traditional IRAs. Specifically, the Service has concluded that you have met the requirements of clause (iii) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of six months from the date of the issuance of this letter ruling to so recharacterize or, if shorter, a period not to extend beyond the expiration of the statute of limitations applicable to Taxpayers' calendar year 1998 Federal Income Tax Return (Form 1040).

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 who requested it. Section 6110(k)(3) of the Code 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.

If you wish to inquire about this ruling, please contact , at (202) 283-9579. Please address all correspondence to T:EP:RA:T4.

Sincerely yours,

/s/ C. Pipkin

Alan C. Pipkin
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Employee Plans