200301046

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIC: 9100.00-00

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

OCT 10 2002

T:EP:RA:T2

LEGEND:
Taxpayer A = ***
Taxpayer B = ***
IRA X = ***
IRA Y = ***
Company M = ***
Sum N = ***

Dear ***:

This is in response to your letter ruling dated ***, addressed to Associate Chief Counsel Domestic and received by us on ***, as supplemented by correspondence dated ***, ***, and ***, submitted on your behalf 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 made in support of your ruling request.

Taxpayer A maintained an IRA X, an individual retirement account described in Code section 408(a), with Company M. During calendar year 1998, Taxpayer A converted IRA X to a Roth IRA, IRA Y, also with Company M. At the time of the conversion the fair market value of IRA X was Sum N.

Taxpayer A and Taxpayer B timely filed a joint Federal Income Tax Return with respect to the 1998 calendar year. Taxpayer A and Taxpayer B paid the pro-rata share of the rollover, 25% of Sum N as tax was paid. This was also done for the taxable year of 1999.

In April 2001, it was determined that there was an error in the rollover conversion. Taxpayers A's and Taxpayer B's adjusted gross income for 1998 exceeded the limit prescribed in section 408A(c)(3)(B) of the Internal Revenue Code.

Taxpayer A and Taxpayer B filed amended returns for the taxable years of 1998 and 1999. The Internal Revenue Service reviewed the amended returns for the applicable taxable years and refunded the taxes previously paid on Sum N.

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 sixty (60) days from the date of this ruling letter to recharacterize Roth IRA Y back to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of 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 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, in relevant part, that an individual with 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, 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 adjusted gross income derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the 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 of the regulations 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 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 statue of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Announcement 99-57, 1999-24 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.

In this case, Taxpayer A was not eligible to convert traditional IRA X into Roth IRA Y since Taxpayer A's and Taxpayer B's combined modified adjusted gross income for 1998 exceeded $100,000. Taxpayer A and Taxpayer B filed their joint 1998 federal income tax return. Taxpayer A was unaware that she was ineligible for the Roth IRA conversion until the year 2001. Therefore, it is necessary to determine whether the taxpayers are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A was ineligible for the 1998 Roth IRA conversion, Taxpayer A was not so informed until April 2001. Upon realizing the mistake, Taxpayer A and Taxpayer B filed amended tax returns for the taxable years of 1998 and 1999. Taxpayer A and Taxpayer B were

issued refunds on the taxes previously paid on this income. Further, Taxpayer A made her request for relief to the Service before the Service discovered Taxpayer A's ineligibility to convert IRA X to Roth IRA Y.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of section 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 Y back to a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clauses (i), (iii) and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted an extension of sixty (60) days from the date of the issuance of this letter ruling to recharacterize Roth IRA Y back to a traditional IRA.

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

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 have any questions concerning this ruling, please contact ***, T:EP:RA:T2, at ***.

Sincerely yours,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Governmental Entities Division

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose