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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Index No. 9100.00-00

DEC 2 2002

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XXXXXXXXXX

LEGEND:

Taxpayer A = ***

Taxpayer B = ***

IRA Y = ***
***

IRA Z = ***
***

Company M = ***

Sum N = ***

Dear ***:

This is in response to a letter dated ***, supplemented by additional correspondence dated ***, 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 have been submitted:

Taxpayer A maintained traditional IRA Y, an individual retirement arrangement described in section 408 of the Internal Revenue Code (the "Code"), with Company M. Taxpayer A's financial advisor at Company M suggested to Taxpayer A that it would be a good opportunity to convert his traditional IRA to a Roth IRA. On this advice, Taxpayer A signed a Roth conversion application with Company M on ***, 2000, and Roth IRA Z was established on ***, 2000 in the amount of Sum N.

Prior to the IRA conversion, Taxpayer A was not advised by his financial advisor at Company M that he was ineligible for a conversion unless he met the required income limits. Taxpayer A is married to Taxpayer B. Their adjusted gross income for 2000 exceeded the limit found at section 408A(c)(3)(B) of the Code. The accountant who prepared Taxpayer A and Taxpayer B's 2000 federal income tax return assumed that Taxpayer A rolled traditional IRA Y to another traditional IRA and did not report any portion of the converted IRA proceeds as taxable income on the 2000 federal income tax return. In 2002, while preparing Taxpayer A and Taxpayer B's 2001 joint federal income tax return, their accountant discovered Form 5498, which indicated that Taxpayer A's traditional IRA Y had been converted to Roth IRA Z.

Taxpayer A and Taxpayer B's 2000 joint federal income tax return was timely filed approximately ***, 2001 under a timely filed extension. This request for relief under section 301.9100-3 of the Regulations was submitted prior to the Service's discovering Taxpayer A's ineligibility to convert his traditional IRA Y to Roth IRA Z. Calendar year 2000 is not a "closed" tax year.

Based on the above facts and representations, you request a ruling that, pursuant to 301.9100-3 of the Regulations, Taxpayer A be granted a period not to exceed six months from the date of this ruling letter to recharacterize his Roth IRA Z to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the 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 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 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 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, Question and Answer –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 a 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) of the Regulations provides that the Commissioner of the Internal Revenue Service, in his discretion, may grant a reasonable extension of 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 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 upon 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 his traditional IRA Y into Roth IRA Z since Taxpayer A's and Taxpayer B's combined modified adjusted gross income for 2000 exceeded $100,000. Taxpayers A and B timely filed, with an extension, their joint 2000 federal income tax return. Taxpayer A was unaware that he was ineligible for the Roth conversion until the year 2002. Calendar year 2000 is not a "closed" tax year. Therefore, it is necessary to determine whether Taxpayer A is eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Taxpayer A was ineligible to convert his traditional IRA Y to Roth IRA Z. However, at the time of the conversion and until he discovered otherwise in May 2002, he believed that his traditional IRA Y had been properly converted to Roth IRA Z. Although Taxpayer A was generally aware

of an income limitation for a Roth IRA conversion, he was not aware that the limit was $100,000. Further, Taxpayer A was not advised by his financial advisor at Company M that he was ineligible to convert traditional IRA Y to Roth IRA Z or of the income limitation. Upon realizing he was ineligible to convert his traditional IRA Y to Roth IRA Z, Taxpayer A requested an extension of time to recharacterize his Roth IRA Z to a traditional IRA.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of the 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 Z as 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, you are granted an extension of 60 days from the date of the issuance of this letter ruling to so recharacterize.

This ruling 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 that 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 regarding this ruling, please contact ***, T:EP:RA:T2, at ***.

Sincerely,

(signed) JOYCE E. FLOYD

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

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose Form 437