200315027

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 9 2003

T:EP:RA:T2

UIC:9100.00-00

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Legend:
Taxpayer A = **********

Taxpayer B = **********

IRA V = **********
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IRA W = **********
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Roth IRA X = **********
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Roth IRA Y = **********
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IRA R = **********
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IRA S = **********
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Company M = **********

Sum N = **********

Sum O = **********

Sum P = **********

Sum Q = **********

Individual A = **********

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Dear **********

This letter is in response to the letter dated April 19, 2002, as supplemented by correspondence dated September 12, 2002, and October 10, 2002, 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 have been made in support of your ruling request.

Taxpayers A and B maintained IRAs V and W, individual retirement arrangements, described in section 408(a) of the Internal Revenue Code ("Code"), with Company M. On August 23, 2000, Taxpayer A converted IRA V, in the amount of Sum N to Roth IRA X with Company M. Likewise, on August 23, 2002, Taxpayer B converted IRA W, in the amount of Sum O to Roth IRA Y with Company M. Taxpayer A is married to Taxpayer B.

Taxpayers A and B's adjusted gross income for 2000 exceeded the limit set forth in section 408A(c)(3)(B) of the Internal Revenue Code. Thus Taxpayers A and B were not eligible to convert IRAs V and W to Roth IRAs X and Y.

At that time Taxpayer A and Taxpayer B were not aware of the $100,000 adjusted gross income limitation, which did not permit such a conversion. Due to health problems, Taxpayer A and Taxpayer B did not meet with their prior accountant for preparation of their 2000 income tax return before the October 15, 2001 deadline, and did not file their 2000 income tax return on a timely basis. As a result, they were not aware of the failed conversion of the Roth IRAs, nor were they aware of the October 15, 2001 deadline to elect to recharacterize the Roth IRA conversions back to traditional IRAs.

Subsequently, in April 2002, Taxpayers A and B employed the services of Individual A, a certified public accountant, to prepare their individual income tax returns for the 2000 and 2001 taxable years. At that time Individual A advised the Taxpayers that they were ineligible for the Roth conversion due to the $100,000 adjusted gross income limitation in section 408A(c)(3)(B) of the Code; and the need to elect to recharacterize the Roth IRA accounts back to traditional IRA accounts.

On April 30, 2002, on the advice of Individual A, Taxpayer B transferred Sum P from Roth IRA Y to traditional IRA S. On May 7, 2002, Taxpayer A transferred Sum Q from Roth IRA X to traditional IRA R. Individual A prepared, and the taxpayers have filed their 2000 Form 1040 reflecting a proper recharacterization of the IRA distributions.

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The difference between the amounts of the original distributions and the amounts recharacterized from Roth IRAs X and Y back to traditional IRAs R and S was due to income attributable to Sum N and Sum O while such amounts were in Roth IRAs X and Y, respectively.

This request for relief under section 301.9100-3 of the regulations was submitted prior to the Service's discovering Taxpayers A and B's ineligibility to convert their traditional IRAs V and W to Roth IRAs X and Y, and prior to the Service's discovering that Taxpayer A and Taxpayer B's "recharacterization" was untimely.

Based on the foregoing information you request the following letter ruling:

> That, pursuant to section 301.9100-3 of the regulations, the recharacterization of Taxpayer A and Taxpayer B's Roth IRA X and Roth IRA Y, which occurred during calendar year 2002, to traditional IRAs R and S, was timely.

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 ("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.

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Section 1.408A-4, Question & 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 that taxable year. Section 1.408A-4, Question & Answer -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.

Section 1.408A-5, Question & Answer –2 of the I.T. Regulations provides, in general, that the net income attributable to the amount of a contribution that is being recharacterized must be transferred to the SECOND IRA along with the contribution.

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 the 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

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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.

Taxpayers A and B did not timely file their joint 2000 Federal Income Tax Return. Taxpayers A and B did not recharacterize Roth IRA X and Y back to traditional IRAs R and S before the date prescribed by law for filing their federal income tax return for the 2000 calendar year. 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, Taxpayers A and B were ineligible to convert IRAs V and W to Roth IRAs X and Y, respectively, since their modified adjusted gross income exceeded $100,000. However, until they discovered otherwise, Taxpayers A and B believed they were eligible to convert their traditional IRAs V and W to Roth IRAs. Upon discovering that they were ineligible to convert IRAs V and W to Roth IRAs X and Y, Taxpayers A and B directed Individual A to take all necessary steps to recharacterize their Roth IRAs X and Y as traditional IRAs. In April 2002, Individual A advised Taxpayer A and Taxpayer B to recharacterize their Roth IRAs X and Y back to traditional IRAs. On April 30, 2002, Taxpayer B recharacterized Sum P from Roth IRA Y to traditional IRA S. On May 7, 2002, Taxpayer A recharacterized Sum Q from Roth IRA X to traditional IRA R. Taxpayers A and B filed this request for relief under section 301.9100-3 of the regulations shortly after discovering that they were ineligible to convert IRAs V and W to Roth IRAs X and Y and, as noted above, before the Service discovered that Taxpayer A and Taxpayer B were ineligible to convert IRAs V and W to Roth IRAs X and Y. The 2000 taxable year is not a "closed" tax year under the statute of limitations.

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 section 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 X and Y to traditional IRAs R and S. Specifically, the Service has concluded that you have met the requirements of clause (i) of section 301.9100-3(b)(1) of the

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Regulations. Therefore, we rule that the recharacterization of Taxpayers A and B Roth IRAs X and Y back to traditional IRAs R and S, which occurred in April and May 2002, was timely.

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 who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions about this ruling, please contact ********** *** ********,T:EP:RA:T:2, at **********.

Sincerely yours,

(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