Internal Revenue Service

Department of the Treasury
200116053
Washington, DC 20224

Index No: 9100.00-00

Contact Person:

Telephone Number:
T:EP:RA:T3 ID No: 50-03192
In Reference to:

Date: JAN 24 2001

LEGEND:

Taxpayer A:

Country B:

Sum C:

Sum D:

Dear :

This is in response to the , 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.

Taxpayer A, during 1998, was, and currently remains, a United States citizen and a resident of Country B. Taxpayer A's sources of income for 1998 included: wages from her foreign employment; dividend and interest income; rental income from the rental of her former residence and from the former site of her practice; and installment sale income from the sale of her practice. Taxpayer A's income for 1998 from the sale of her practice was approximately Sum C, which sum exceeded $100,000.

In 1998, Taxpayer A transferred, in four separate transfers, approximately Sum D from her traditional individual retirement arrangement (IRA) accounts to Roth IRA accounts.

In early 1999, as a result of delays in preparing her previous federal income tax returns, Taxpayer A decided to change accountants. In mid-1999, Taxpayer A informed her new accountant that she would request an extension of time to file her 1998 Federal Income Tax Return but would need her accountant's help in preparing said return. On June 15, 1999, Taxpayer A filed a Form 4868, Application for Automatic extension of Time To File U.S. Individual Income Tax Return, with respect to her 1998 federal tax return.

Taxpayer A was unaware that her June 15, 1999 request for extension was valid only through August 15 and believed that it applied through October 15, 1999.

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In September, 1999, Taxpayer A mailed her tax documentation to her accountant who was located in the United States to enable the accountant to prepare her 1998 Federal Income Tax Return. At this time, Taxpayer A was unaware that gains from the sale of her practice were included in the threshold for determining her eligibility to convert her traditional IRAs into Roth IRAs. However, in October, 1999, Taxpayer A's accountant advised her (1) that her extension was valid only through August 15, 1999, and (2) that her capital gain income had to be included for purposes of determining her eligibility to convert her regular IRAs to Roth IRAs.

This request for relief under section 301.9100-3 of the Procedure and Administration Regulations was made pursuant to the advice of Taxpayer A's accountant.

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 reconvert her Roth IRAs 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.

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.

Taxpayer A did not timely file her 1998 Federal Income Tax Return. As a result, she is 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 A was ineligible to convert her traditional IRAs to Roth IRAs since her adjusted gross income exceeded $100,000. However, until her accountant advised her otherwise, Taxpayer A erroneously believed that gains from the sale of her practice did not count toward the threshold for determining her eligibility to convert her traditional IRAs to Roth IRAs. Taxpayer A filed this request for section 301.9100 relief immediately after receiving the above information from her accountant. 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 IRA as traditional IRAs. 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, you are granted an extension of six months from the date of the issuance of this letter ruling to so recharacterize.

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 6100(j)(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.

Sincerely yours,

Kenneth T Yednock

Kennneth T. Yednock
Manager, Employee Plans
Technical
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

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