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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200208035

UIL No.: 9100.00-00

NOV 28 2001

T:EP:RA:T1

Legend :

Taxpayer A.....

Taxpayer B.....

IRA W.....

IRA X.....

Company M.....

Sum N.....

Dear :

This is in response to a letter dated June 28, 2001, as supplemented by correspondence dated October 29, 2001 and November 14, 2001, as 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 were submitted in connection with your request.

Taxpayer A maintained IRA W, an individual retirement arrangement described in section 408(a) of the Internal Revenue Code (the "Code"), with Company M. In 1998, Taxpayer A converted IRA W to Roth IRA X with Company M. The amount converted was Sum N.

In 1999, Taxpayer A and Taxpayer A's spouse, Taxpayer B, provided their tax records to their accountant, which included Form 1099-R from Company M reflecting the conversion to the Roth IRA, for the purpose of preparing their 1998 federal income tax return. The accountant did not include Sum N as taxable income on the tax return, apparently because Taxpayer A's and Taxpayer B's modified adjusted gross income exceeded the $100,000 limit found in Code section 408A(c)(3)(B). Taxpayer A and Taxpayer B jointly and timely filed their calendar year 1998 federal income tax return.

Taxpayers A and B were unaware of the need to recharacterize Roth IRA X due to the failed

conversion. Taxpayers A and B mistakenly believed that they could leave the money in the Roth IRA and treat it as a traditional IRA until a year when their combined adjusted gross income was low enough to allow the value of the IRA, at that time, to be included as income, and complete the conversion (i.e., a year in which their combined modified adjusted gross income would not exceed the $100,000 limit).

Taxpayers A and B were unaware of the time limits found in Announcement 99-57, 1999-24 I.R.B. 50 (June 14, 1999) and Announcement 99-104, 1999-44 I.R.B. 555 (November 1, 1999), for recharacterizing an amount that had been converted from a traditional IRA to a Roth IRA. Taxpayer A made this request for relief under section 301.9100-3 of the regulations prior to the Service discovering Taxpayer A's ineligibility to convert IRA W into Roth IRA X or Taxpayer A's failure to recharacterize IRA X back to a traditional IRA pursuant to the above announcements.

Based on your submission and the above facts and representations, you request a 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 IRA Y back to a traditional IRA.

With respect to your ruling request, Code section 408A(d)(6) and section 1.408A-5 of the federal 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 originally 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 that an individual with an 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 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 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 (AGI) 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 regulations provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, 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 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 Internal Revenue Service (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 provided that a taxpayer who timely filed his or 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 provided that a taxpayer who timely filed his or 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 IRA W into a Roth IRA since Taxpayer A's and Taxpayer B's combined modified adjusted gross income exceeded $100,000. Taxpayers A and B timely filed their joint 1998 federal income tax return. Therefore, it is necessary to determine whether Taxpayer A is eligible for relief under the provisions of section 301.9100-3 of the regulations.

Taxpayers A and B were not aware until calendar year 2001 of the need to recharacterize Roth IRA X back to a traditional IRA or of the above Announcements. Upon realizing his mistake, Taxpayer A requested relief from the Service before the Service discovered his ineligibility to convert IRA W into a Roth IRA or his failure to recharacterize Roth IRA X pursuant to Announcement 99-57 or 99-104. The 1998 taxable year is not closed under the statute of limitations. Thus, Taxpayer A satisfies the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the regulations. Accordingly, we rule 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 IRA X back to a traditional IRA.

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

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) 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. Should you have any concerns regarding this ruling, please contact .

Sincerely yours,

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

cc:

Enclosures:
Deleted copy of ruling
Notice 437