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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 2 2002

200213030

Uniform Issue List: 9100.00-00

T:EP:RA:T4

Legend:

Taxpayer A=
Date B =
IRA X=

IRA Y=

Dear :

This is in response to the August 28, 2001, letter in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations. The following facts and representations support your ruling request.

Taxpayer A maintained IRA X, an individual retirement arrangement described in section 408(a) of the Internal Revenue Code. Taxpayer A was born on Date B and reached age 70 ½ in 1997. During calendar year 1999, Taxpayer A converted IRA X to a Roth IRA, IRA Y. Taxpayer A timely filed his calendar year 1999 Federal Income Tax Return.

At the time of the conversion and throughout the remainder of calendar year 1999, Taxpayer A believed that he was qualified to make the conversion described above under Code section 408A.

In July 2001, Taxpayer A received a Notice CP2000 from the Internal Revenue Service ("IRS") proposing a change to Taxpayer A's 1999 Federal Income Tax Return, increasing Taxpayer A's income for 1999 to reflect social security income received. In preparing the information for his 1999 income tax return, Taxpayer A did not realize that the paperwork reflecting the social security income was missing. Also, when preparing the return, the preparer did not realize that the social security income was not reported

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on either the December 1999 income projection or the 1999 income tax return.

The Notice CP2000 did not indicate that Taxpayer A was ineligible to convert his traditional IRA to a Roth IRA. However, soon after receiving such notice, Taxpayer A realized that the item of unreported social security income would cause his income to exceed the section 408A(c)(3)(B) limit for 1999. This request for a letter ruling was submitted to the IRS shortly thereafter.

As of the date of this ruling request, Taxpayer A had not recharacterized the Roth IRA at issue as a traditional IRA.

Based on the above, you 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 recharacterize his Roth IRA, IRA Y to a traditional IRA. That, should such recharacterization occur, Taxpayer A is also granted a period of time which extends to, but not beyond, December 31, 2003, to take his required minimum distributions for 1999, 2000, and 2001 from the resultant traditional IRA, to the extent such minimum distributions have not already been taken.

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(a) 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)) 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 statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Taxpayer A timely filed his 1999 Federal Income Tax Return. However, as a result of an item of unreported social security income which he and his tax preparer mistakenly overlooked when filing his 1999 return, Taxpayer A was unaware that he was ineligible

to convert his traditional IRA to a Roth IRA in 1999. Taxpayer A was alerted to the item of underreported income only after the statutory deadline for recharacterizing a Roth IRA as a traditional IRA under section 408A(d)(6) of the Code had passed. Therefore, it is necessary to determine if he is eligible for relief under the provisions of section 301.9100-3 of the regulations.

In this case, Taxpayer A was ineligible to convert his traditional IRA, IRA X, to a Roth IRA, IRA Y, since his adjusted gross income exceeded $ 100,000. However, until he discovered that he had unreported income in 1999, Taxpayers A believed that he was eligible to convert his IRA X to a Roth IRA. Taxpayer A filed this request for section 301.9100 relief shortly after discovering that he was ineligible to convert IRA X to a Roth IRA and, as noted above, before the IRS discovered his failure to comply with section 408A of the Code. Although the Notice CP2000 from the IRS alerted Taxpayer A to this failure, the purpose of the notice was merely to collect taxes owed on unreported income. The IRS had yet to discover that the IRA conversions were not allowable under Section 408A(c)(3)(B) of the Code. Thus, prior to this request for relief, the IRS was unaware of the Taxpayer's failure to make a timely election under 408A(d)(6) to remedy the situation. Calendar year 1999 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 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 six months from the date of the issuance of this letter ruling to so recharacterize.

Section 401(a)(9)(A) of the Code provides that a trust shall not constitute a qualified trust unless the plan provides that the entire interest of each employee—(i) will be distributed to such employee not later than the required beginning date, or (ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

Section 401(a)(9)(C) of the Code provides, in pertinent part, that the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 ½.

Section 408(a)(6) provides, in pertinent part, that the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his or her beneficiaries, but only if, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) shall apply to

the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Section 1.401(a)(9)-1, Q&A J-4 of the proposed regulations provides that a section 242(b) election may be revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and the applicable section of the regulations. If the section 242(b) election is revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations and the total amount of the distributions which would have been required to be made prior to the date of the revocation in order to satisfy section 401(a)(9), but for the section 242(b)(2) election, have not been made, the trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which was required to have been distributed to satisfy the requirements of section 401(a)(9) and continue distributions in accordance with such requirements.

Since Taxpayer A believed that he had validly converted his traditional IRA, IRA X, to a Roth IRA, IRA Y, he did not believe that such IRA was subject to the minimum distribution requirements of Code section 401(a)(9), made applicable to an IRA pursuant to Code section 408(a)(6). However, if and when the recharacterization granted above takes place, the Code section 401(a)(9) minimum required distribution rules will be applicable to the resultant traditional IRA. Although the regulations do not specifically address the consequences of a recharacterization made subsequent to the required beginning date such that some of the required distributions have been missed in the interim, such a situation is analogous to the revocation of the section 242(b)(2) election described above. The IRA resulting from the recharacterization would be treated as if it had been in existence as of calendar year 1999, pursuant to the relief granted above under section 301.9100-3 of the regulations (extending the normal deadline under 408A(d)(6) of the Code). Therefore, using the same logic as applied to the revocation of the 242(b) election described in the regulation cited above, the resultant traditional IRA must distribute by the end of the calendar year following the calendar year in which the recharacterization occurs the total amount not yet distributed which was required to have been distributed to satisfy the requirements of section 401(a)(9) of the Code and continue distributions in accordance with such requirements. Taxpayer A is thus granted such relief in order to take his required minimum distributions for 1999 and subsequent years, to the extent not already taken, from the traditional IRA that results from the recharacterization granted above, should such recharacterization take place.

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 wish to inquire about this ruling, please contact :
Please address all correspondence to T:EP:RA:T4.

Sincerely yours,

Alan C. Pipkin
Manager, Technical Group 4
Employee Plans, TE/GE Division

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