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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200223071

UIC: 9100.00-00

MAR 15 2002

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T:EP:RA:T2

LEGEND:

| | |
|---|---|
| Taxpayer A | = *** |
| Taxpayer B | = *** |
| Accountant C | = *** |
| Accountant D | = *** |
| IRA M | = *** |
| IRA N | = *** |
| IRA O | = *** |
| IRA P | = *** |
| IRA Q | = *** |
| IRA R | = *** |
| IRA S | = *** |
| Company Z | = *** |
| Sum V | = *** |
| Sum W | = *** |

Dear ***:

This is in response to the *** letter, submitted by your authorized representative, as supplemented by correspondence dated *** and *** in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("the Regulations"). The following facts and representations support your ruling request.

Taxpayer A maintained IRAs M, N and O, individual retirement accounts described in the Internal Revenue Code ("Code") section 408(a), with Company Z. During calendar year 1998, Taxpayer A converted IRAs M, N and O to Roth IRAs Q and R, also with Company Z. The amount converted was Sum V.

Taxpayer B, Taxpayer A's spouse, maintained IRA P, an individual retirement account described in Code section 408(a), with Company Z. During calendar year 1998, Taxpayer B converted IRA P to a Roth IRA, IRA S, also with Company Z. The amount converted was Sum W.

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Taxpayer A and Taxpayer B filed a joint Federal Income Tax Return with respect to the 1998 calendar year. Taxpayers A and B's adjusted gross income for 1998 exceeded the limit found at section 408A(c)(3)(B) of the Internal Revenue Code. However, on several occasions prior to the IRA "conversion", Taxpayer A and Taxpayer B consulted with their lead accountant, Accountant C, with respect to these Roth conversions. Accountant C never advised Taxpayer A and Taxpayer B that they would be ineligible to convert IRA M, IRA N, IRA O and IRA P to Roth IRA Q, Roth IRA R and Roth IRA S.

Accountant D prepared Taxpayer A and B's Federal Income Tax Returns for tax years 1998 and 1999. In 2000, when Accountant D reviewed Taxpayer A and B's return for 1999, Accountant D informed Taxpayer A and Taxpayer B that they were ineligible to convert their traditional IRAs to Roth IRAs.

Prior to the end of the 1999 calendar year, Taxpayers A and B were unaware that they were ineligible to convert their traditional IRAs to Roth IRAs. As a result, prior to the end of the 1999 calendar year, they were also unaware of the time limits found in Announcements 99-57 and 99-104 for recharacterizing an amount that had been converted from a traditional IRA to a Roth IRA.

Taxpayers A and B timely filed their calendar year 1998 Federal Income Tax Return.

Based on the above, you, through your authorized representative, request the following letter ruling:

> That, pursuant to section 301.9100-3 of the regulations, Taxpayers A and B are granted a period not to exceed six months from the date of this ruling letter to recharacterize their Roth IRAs, IRA Q, IRA R and IRA S, respectfully, 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 ("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 ("AGI") 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, 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, Q&A-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 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, 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 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 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 statue of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Announcement 99-57, 1999-24 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.

Taxpayers A and B timely filed their 1998 Federal Income Tax Return. As a result, they were eligible for relief under Announcement 99-57 or Announcement 99-104. However, they missed the deadlines found in said Announcements. 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 their IRA M, IRA N, IRA O and IRA P to Roth IRA Q, IRA R and Roth IRA S, respectively, since their adjusted gross income exceeded $100,000. However, until they discovered otherwise, Taxpayers A and B believed that they were eligible to convert their IRAs M, N, O and P to Roth IRAs. Taxpayers A and B filed this request for section 301.9100 relief shortly after discovering that they were ineligible to convert their IRAs M, N, O and P to Roth IRAs, and before the Service independently discovered their failure to comply with the Announcements referenced above. Calendar year 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 section 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 IRAs (IRAs Q, R and S) as traditional IRAs. Specifically, the Service has concluded that you have met the requirements of clauses (i) 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.

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.

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 concerning this ruling, please contact ***, at ***.

Sincerely yours,

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

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