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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Uniform Issue List: 408.00-00

JUL 17 2002

T:EP:RA:T1

Legend:

Taxpayer A =

Taxpayer B =

IRA W =

IRA X =

IRA Y =

IRA Z =

Company M =

Amount 1 =

Dear :

This is in response to a ruling request dated December 27, 2001, from your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations have been submitted:

Taxpayer A is married to Taxpayer B. During ., Taxpayers A and B converted their traditional individual retirement accounts (IRAs W and X) maintained with Company M to Roth IRAs (IRAs Y and Z), also maintained with Company M. Subsequent to the purported transaction, Taxpayers A and B discovered that their combined adjusted gross income for calendar year , exceeded the limit found at section 408A(c)(3)(B) of the Internal Revenue Code ("Code"). At the time of the purported conversions, Taxpayers A and B were unaware they were not eligible to convert their traditional IRAs to Roth IRAs.

Taxpayers A and B discovered the time limits found in Announcements 99-57 and 99-104 (cited below) after said time limits had expired. When Taxpayers A and B filed their joint calendar year Federal Income Tax Return, they reported adjusted gross income of $ In August of the Taxpayers received notice from the Internal Revenue Service that Taxpayer B's business did not qualify for Subchapter S status. As a result, their combined gross income for calendar year was actually $ exceeding the limit for converting from a traditional IRA to a Roth IRA.

From September of to August of Taxpayers A and B believed that Taxpayer B was eligible to file as a Subchapter S corporation, and , thus, acted in good faith at all times. As of the date of the letter ruling request, the Taxpayers had not received a notice from the Internal Revenue Service indicating that the Taxpayers were ineligible to convert their traditional IRAs to Roth IRAs.

On a date which was no later than April 15, 2002, Taxpayers A and B filed an amended Federal Income Tax Return, Form 1040. On an attachment to said amended return, Taxpayers A and B noted that on their Federal Income Tax Return, Form 1040, they reported taxable IRA distributions in the value of Amount 1 which represented one quarter of the values of their traditional IRAs purportedly converted to Roth IRAs during The attachment further indicates that they subsequently became aware that they were ineligible to convert their traditional IRAs to Roth IRAs. Finally, it indicates that they have filed a request for relief under section 301.9100-3 with the Service.

Based on the foregoing facts and representations, you have requested the following ruling: that, pursuant to section 301.9100-3 of the Regulations, Taxpayers A and B are granted a period not to exceed 60 days form the date of this ruling letter to recharacterize their Roth IRAs Y and Z to traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the Regulations, Code section 408A(d)(6) and section 1.408A-5 of the 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, of the 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.

Section 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) 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 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's 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.

Taxpayers A and B timely filed their joint Federal Income Tax Return, but did not discover they were ineligible to recharacterize their IRAs until August of As a result, Taxpayers A and B were ineligible for relief under either Announcement 99-57 or Announcement 99-104. 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 traditional IRAs W and X to Roth IRAs Y and Z because their adjusted gross income exceeded $ However, until they discovered otherwise, Taxpayers A and B believed that they were eligible to convert their IRAs W and X to Roth IRAs Y and Z. Taxpayers A and B filed this request for section 301.9100 relief shortly after discovering that they were ineligible

to convert IRAs W and X to Roth IRAs Y and Z and, as noted above, before the Service discovered their failure to comply with the Announcements referenced above.

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 IRAs as traditional IRAs. Specifically, the Service has concluded that you have met the requirements of clause (i) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of 60 days 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 ruling is based on the assumption that IRAs W and X and Roth IRAs Y and Z meet the requirements Code sections 408 and 408A, respectively, at all relevant times.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k) provides that it may not be used or cited by others as precedent.

Copies of this ruling have been sent to your authorized representatives pursuant to a power of attorney on file in this office.

Should you have any questions concerning this letter ruling, please contact T:EP:RA:T1 , of my staff at .

Sincerely yours,

Andrew E. Zuckerman,
Manager, Employee Plans
Technical Group 1
Tax Exempt and Government
Entities Division

Enclosures:
Deleted Copy of the Ruling
Notice 437

cc: