DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

200307091

NOV 19 2002

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T1

Uniform Issue List: 408.00-00

Legend:

Taxpayer A =

IRA X =

Roth IRA Y =

Company Q =

Dear

This is in response to a ruling request dated September 6, 2002 as supplemented by correspondence dated October 28, 2002, from your authorized representative, 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, a traditional individual retirement arrangement described in section 408(a) of the Internal Revenue Code ("Code"), with Company Q. In December 1998, following the advice of a Company Q financial advisor, Taxpayer A converted IRA X to a Company Q Roth IRA Y, also with Company Q. However, prior to the conversion, Company Q did not advise Taxpayer A that he was ineligible to convert the traditional IRA to a Roth IRA. In 1998, the Taxpayer A's adjusted gross income exceeded the limit allowable under section 408A(c)(3)(B) of the Code; thus, Taxpayer A was not eligible to convert IRA X to a Roth IRA Y.

On March 26, 2001, the Internal Revenue Service issued Notices of Deficiency for tax years 1995, 1996, and 1998. In June 2001, Taxpayer A, acting pro se, filed a timely petition in the Tax Court disputing the tax deficiencies. However, the Taxpayer's 1998 Federal Income Tax Return was not timely filed, nor was the return filed until January 2002.

In April 2002, Taxpayer A retained counsel. Counsel represents that Taxpayer A was unaware, until April 2002, of the 408A(c)(3)(B) limitation, and Taxpayer A believed that the traditional IRA X had been properly converted into a Roth IRA.

On May 20, 2002, Taxpayer A and the Service were granted a joint motion, by the Tax Court, allowing Taxpayer A to submit a private letter ruling request under section 301.9100-3 of the regulations. As of the date of this ruling request, Taxpayer A had not recharacterized his Roth IRA Y as an traditional IRA X.

Based on the above, you, through your authorized representative, request the following letter ruling: that Taxpayer A is granted a period not to exceed sixty days from the date of this ruling to recharacterize his Roth IRA Y as a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the 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 return for the year of contribution.

Section 1.408A-5 of the regulations, 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.

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. 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 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)(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 taxpayers 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.

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 did not timely file his 1998 Federal Income Tax Return. As a result, the Taxpayer is not eligible for relief under either Announcement 99-57 or Announcement 99-104. Therefore, it is necessary to determine if he is eligible for relief under the provisions of Section 301.9100-3 of the regulations.

Section 301.9100-3(b)(3)(iii) of the regulations provides that a taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the Internal Revenue Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c)(1)(i) of the regulations provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability then if the election had been timely made.

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 taxpayers receipt of a ruling granting relief under this section.

In this case, Taxpayer A was ineligible to convert IRA X to an IRA Y because his adjusted gross income exceeded $100,000. However, from the time of the conversion until Taxpayer A discovered otherwise, through advice from counsel, in April 2002, Taxpayer A believed that his IRA X had been properly converted to a Roth IRA Y.

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 (iii) and (v) of section 301.9100-3(b)(1) of the

regulations. Therefore, you are granted an extension of sixty 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 that 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.

This letter ruling assumes that all of the IRAs referenced herein will meet the requirements of either Code section 408 or Code section 408A (to the extent applicable) at all times relevant thereto.

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 with this letter, please contact

Sincerely,

Andrew E. Zuckerman, Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437
Copy of Notification Letter (Form 1155) to Authorized Representative