Internal Revenue Service

Department of the Treasury

Washington, DC 20224

200120040

UIC: 9100.00-00

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T3

FEB 20 2001

LEGEND:

Taxpayer A:

Individual B:

Individual C:

Accountant D:

IRA X:

IRA Y:

Company M:

Dear :

This is in response to the , letter, submitted by 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, who is unmarried, maintained IRA X, an individual retirement arrangement described in Code section 408(a), with Company M. On or about December 28, 1998, pursuant to the advice of Individual B, his financial advisor employed by Company M, Taxpayer A converted IRA X to a Roth IRA, IRA Y, also with Company M.

Taxpayer A's adjusted gross income for 1998 exceeded the limit found at section 408A(c)(3)(B) of the Internal Revenue Code. Individual C, an accountant, assisted

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Taxpayer A in completing his 1998 Federal Tax Return. However, Individual C did not advise Taxpayer A that he was ineligible to convert his traditional IRA, IRA X, to a Roth IRA, IRA Y. Additionally, Individual C reported Taxpayer A's December 28, 1998 IRA conversion as a rollover and did not report any portion of the converted IRA proceeds as taxable income. Thus, Taxpayer A did not pay Federal income tax on the IRA X proceeds which were converted to IRA Y.

During the 1998 and 1999 calendar years, Taxpayer A believed that he was eligible to convert his traditional IRA, IRA X, to a Roth IRA, IRA Y. However, during calendar year 2000, Taxpayer A changed accountants and began using the services of Accountant D. Accountant D advised Taxpayer A that he was ineligible to convert IRA X, a traditional IRA, to IRA Y, a Roth IRA, because his income exceeded the Code section 408A(c)(3)(B) limit.

Because Taxpayer A believed that his conversion of IRA X to Roth IRA Y was valid, he was unaware of the need to recharacterize IRA Y to a traditional IRA and, consistent with his belief, was 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. This ruling request was submitted before the Internal Revenue Service discovered the failure to recharacterize pursuant to said Announcements.

Taxpayer A timely filed his 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, Taxpayer A is granted a period not to exceed six months from the date of this ruling letter to recharacterize her Roth IRA, IRA Y, to a traditional IRA.

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 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 failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the

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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.

Taxpayer A timely filed his 1998 Federal Income Tax Return. As a result, although he did not treat the balance of his IRA X as taxable income on his 1998 Federal Tax Return, he was eligible for relief under either Announcement 99-57 or Announcement 99-104. However, he missed the deadlines found in said Announcements. 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 IRA X to Roth IRA Y since his adjusted gross income exceeded $100,000. However, until he discovered otherwise, Taxpayer 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 Service discovered his 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 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 traditional IRAs. 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.

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 6100(j)(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.

Sincerely yours,

Kenneth T Yednock

Kenneth T. Yednock
Manager, Employee Plans
Technical
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose