TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NOV 29 2001

200208038

Uniform Issue List: 9100.00-00

Legend:

Taxpayer A=
Taxpayer B=
Individual C=
Individual D=
IRA R=

IRA S=

IRA T=

IRA U=

IRA V=

IRA W=

IRA X=

IRA Y=

IRA Z=

Company M=

Company N=

Trustee O=

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Dear :

This is in response to the September 7, 2001 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 maintained IRA R, an individual retirement arrangement described in section 408(a) of the Internal Revenue Code. During calendar year 1999, Taxpayer A employed the services of Individual C, with Company M, in order to convert IRA R to a Roth IRA, IRA W.

Taxpayer A also maintained IRA S, an individual retirement arrangement described in Code section 408(a). During calendar year 1999, Taxpayer A employed the services of Individual C, with Company M, in order to convert IRA S to a Roth IRA, IRA X.

Taxpayer B, Taxpayer A's spouse, maintained IRA T, a SEP IRA, and IRA U, an individual retirement arrangement described in Code section 408(a). During calendar year 1999, Taxpayer B employed the services of Individual C, with Company M, in order to convert IRA T and IRA U into one Roth IRA, IRA Y.

Taxpayer B also maintained IRA V, an individual retirement arrangement described in Code section 408(a). During calendar year 1999, Taxpayer B employed the services of Individual C, with Company M, in order to convert IRA V to a Roth IRA, IRA Z.

At the time of the conversions and throughout calendar year 1999, Taxpayers A and B believed that they were qualified to make all of the conversions described above under Code section 408A.

In February 2000, while gathering financial information to send to their tax preparer, Taxpayers A and B realized that their adjusted gross income for 1999 exceeded the limit found at section 408A(c)(3)(B) of the Code. Soon thereafter, in February 2000, Taxpayers A and B contacted Individual C, their registered representative, and requested that all five of the IRA conversions be recharacterized. Taxpayers A and B believed that they had met the requirements for a timely recharacterization under Code section 408A(d)(6) and Section 1.408A-5 of the Income Tax Regulations. However, due to a clerical error at the office of their registered representative, the request to recharacterize the Roth IRA conversions was never transmitted to the trustee of their Roth IRAs, Trustee O.

Taxpayers A and B employed the tax preparation firm Company N to prepare their 1999 income tax return. The president of Company N is Individual C, who is also the registered representative of Taxpayers A and B as well as the owner of Company M. Individual D, an employee of Company N, prepared and timely filed Taxpayers' 1999 income tax return. Taxpayers A and B, as well as Individual D, believed a complete and accurate return had been filed.

In May 2001, Taxpayers A and B received from the Internal Revenue Service Notice CP-2000 for tax year 1999, proposing a change to the tax return, increasing the amount reported as taxable pension distributions to include the amounts distributed from the five IRA accounts that had been converted to Roth IRA's. The Notice CP-2000 did not indicate that Taxpayers were ineligible to convert their traditional IRAs to Roth IRAs.

After receiving Notice CP-2000, Taxpayers A and B contacted Company N and it was only then that Taxpayers A and B, Company N, and Company M realized that the recharacterization request made in February 2000 had not been undertaken.

As of the date of this ruling request, Taxpayers A and B had not recharacterized their Roth IRAs as traditional IRAs.

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 W, IRA X, IRA Y, and IRA Z 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 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-4 of the regulations, Question and Answer-4, provides that amounts standing in a SEP IRA can be converted to a Roth IRA on the same terms as an amount in any other traditional IRA.

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. 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)) 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.

Taxpayers A and B timely filed their 1999 Federal Income Tax Return. However, as a result of a clerical error, Taxpayers A and B did not recharacterize their Roth IRAs as traditional IRAs in a timely manner so as not to violate section 408A(c)(3)(B) of the Code. 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, IRA R, IRA S, IRA T, IRA U, and IRA V to Roth IRAs, IRA W, IRA X, IRA Y, and IRA Z, 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 R, S, T, U, and V to Roth IRAs. Upon discovering their error, Taxpayers A and B contacted their registered representative and requested that their five Roth IRAs be recharacterized. This request was submitted several months before the due date of their 1999 tax return and, but for the failure of the Taxpayers' registered representative to transmit such request to the trustee, such recharacterization would have been timely under Code section 408A(d)(6). Taxpayers A and B filed this request for section 301.9100 relief shortly after discovering that the aforementioned recharacterization request had not been submitted. Although the Notice CP-2000 from the Internal Revenue Service alerted Taxpayers to this clerical error, the purpose of the notice was merely to collect taxes owed on the IRA distributions. The Internal Revenue Service (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 Taxpayers' 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 IRAs as traditional IRAs. Specifically, the Service has concluded that you have met the requirements of clauses (i), (ii), 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.

If you wish to inquire about this ruling, please contact at (202) 283-9579. Please address all correspondence to T:EP:RA:T4.

Sincerely yours,

/s/ Pipkin

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