TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200215062

JAN 16 2002

UIC: 9100.00-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Attorney C:

IRA X:

IRA Y:

IRA W:

IRA Z:

Company M:

Month 1:

Amount 1:

Amount 2:

335

Dear Mr. and Mrs. :

This is in response to the , letter, submitted by your authorized representative on your behalf, 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, an individual retirement arrangement described in Code section 408(a), with Company M. During Month 1, 1998, Taxpayer A converted IRA X to a Roth IRA, IRA Y, also with Company M. IRA Y currently has a value of approximately Amount 1.

Taxpayer B maintained IRA W, an individual retirement arrangement described in Code section 408(a), with Company M. During Month 1, 1998, Taxpayer A converted IRA W to a Roth IRA, IRA Z, also with Company M. IRA Z currently has a value of approximately Amount 2.

Taxpayer A is married to Taxpayer B. Taxpayers A and B file joint Federal Income Tax Returns.

During 1998, Taxpayers A and B were not aware that their adjusted gross income exceeded the limits found in Code section 408A(c)(3)(B).

Taxpayers A and B timely filed their calendar year 1998 Federal income Tax Return with the assistance of a tax preparer. The tax preparer did not advise Taxpayers A and B of the adjusted gross income limitations applicable to Roth conversions.

During the latter part of calendar year 1999, Taxpayers A and B received a "form letter" from Company M that indicated that there were income tax limitations applicable to Roth conversions and that if it was necessary to take corrective action with respect to their converting their traditional IRAs to Roth IRAs, said corrective action would have to be accomplished no later than the end of calendar year 1999. Upon receipt of said letter, Taxpayers A and B contacted Company M but were advised that Company M would treat their Roth IRAs, IRAs Y and Z, as traditional IRAs without further action on their part. Company M did not do so and, as of the date of this letter ruling request, has not done so.

Taxpayers A and B contacted Attorney C to assist them with respect to their attempted IRA conversions after ascertaining that Company M had not reconverted their Roth IRAs, IRAs Y and Z, to traditional IRAs. Attorney C filed this request for letter ruling on their behalf.

This request for relief under section 301.9100-3 of the Procedure and Administration Regulations was filed with the Internal Revenue Service prior to the Service's discovering that Taxpayers A and B were not eligible to convert their IRAs X and W to Roth IRAs Y and Z, and prior to the Service's discovering that Taxpayers A and B had not timely recharacterized their Roth IRAs Y and Z as traditional IRAs. As noted above, as of the date of this ruling request, Taxpayers A and B's Roth IRAs have not been recharacterized.

In conjunction with any grant of relief under this letter ruling, Taxpayers A and B will file an amended joint calendar year 1998 Federal Income Tax Return. 1998 is not a "closed" tax year.

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, or if shorter, a period not to extend beyond the date the statute of limitation with respect to their calendar year 1998 Federal Income Tax Return expires, to recharacterize their Roth IRAs, IRA Y and Z, as 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-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 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 did timely file their 1998 Federal Income Tax Return. As a result, they were eligible for relief under either Announcement 99-57 or Announcement 99-104. However, as noted above, they missed the due dates set forth in the 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 IRAs X and W to Roth IRAs Y and Z since their adjusted gross income for calendar year 1998 exceeded $100,000. However, at the time of the conversions, Taxpayers A and B believed that their traditional IRAs had been properly converted to Roth IRAs. Additionally, Taxpayers A and B attempted to take corrective action with respect to their conversions prior to the end of calendar year 1999, but because of circumstances outside their control were unable to do so. Finally, Taxpayers A and B's ineligibility to convert their IRAs X and W to Roth IRAs Y and Z and their failure to timely recharacterize their Roth IRAs were not discovered by the Service prior to their filing this request for letter ruling.

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 (i) and (ii) of section 301.9100-3(b)(1) of the regulations.

Therefore, with respect to your ruling request, the Service concludes as follows:

That, pursuant to section 301.9100-3 of the regulations, Taxpayers A and B are granted a period of time, not to exceed six months from the date of this letter ruling, or if shorter, a period not to extend beyond the date the statute of limitation with respect to their calendar year 1998 Federal Income Tax Return expires, to recharacterize their Roth IRAs Y and Z to traditional IRAs.

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 that requested it. Section 6100(j)(3) of the Code provides that it may not be used or cited as precedent.

Please note that in conjunction with recharacterizing Taxpayers and B's Roth IRAs Y and Z, Taxpayers A and B must file an amended calendar year 1998 Federal Income Tax Return consistent therewith.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter ruling was prepared by Larry Heben (ID: 50-03192) of this Branch. He can be reached at (202) 283-9618.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

340