TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200219040

FEB 14 2002

UIC: 9100.00-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Accountant D:

Law Firm E:

City F:

State G:

Date 2:

Month 3:

Date 6:

IRA U:

Roth IRA V:

Sum 1:

Company M:

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Dear [redacted] :

This is in response to the , letter, submitted by your authorized representative on your behalf, as supplemented by correspondence dated , , , , , , and , 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 was married to Taxpayer B. Taxpayer A and B filed a joint Federal Income Tax Return with respect to calendar year 1998.

During Month 3, 1998, Taxpayer A converted his traditional individual retirement arrangement (IRA), IRA U, in the amount of Sum 1, to Roth IRA V.

IRA U and Roth IRA V either were or are maintained with Company M.

As noted above, Taxpayers A and B filed a joint 1998 Federal Income Tax Return. Such return was timely filed after Taxpayers A and B received an extension to file. On their 1998 Federal Income Tax Return, which was completed by their accountant, Accountant D, Taxpayers A and B reported a modified adjusted gross income of less than $100,000. Thus, at the time, Taxpayer A believed that his conversion of IRA U to Roth IRA V was in compliance with the rules under Code section 408A.

Taxpayer A died on Date 2, 1999 while a resident of State G. Since Taxpayer A was born on Date 6, 1929, he had not attained age 70 ½ as of his date of death.

Subsequent to Date 2, 1999, Taxpayer A's wife, Taxpayer B, who is the executrix of Taxpayer A's estate, provided Accountant D with financial information relating to Taxpayer A's estate and to the income tax returns of Taxpayers A and B. After receiving such information, during Month 3, 1999, Accountant D advised Taxpayer B that the modified adjusted gross income of Taxpayers A and B for calendar year 1998 exceeded $100,000, and that, as a result, Taxpayer A was ineligible to convert his IRA U to Roth IRA V.

Subsequent to the above, but also during Month 3, 1999, Law Firm E advised Taxpayer B that, pursuant to Announcement 99-104, Roth IRA V had to be reconverted to a traditional IRA by December 31, 1999. On December 31, 1999, Taxpayer C, Taxpayer A's son, FAXed a letter, which had been signed by Taxpayer B, to the City F, Illinois office of Company M, in which Taxpayer B directed Company M to recharacterize Roth IRA V as a traditional IRA. Taxpayer A had maintained his Roth IRA V in the City F, State G office of Company M. Company M did not recharacterize

Roth IRA V as a traditional IRA by the end of calendar year 1999 and, as of the date of this ruling request, has not so recharacterized.

As of the date of this ruling request, no amended 1998 Federal Income Tax Return has been filed.

As noted above, Taxpayers A's and B's Federal adjusted gross income for 1998 (calendar year 1998) exceeded $100,000.

This request for relief under section 301.9100-3 of the Procedure and Administration Regulations was made pursuant to the advice of Taxpayer B's attorney.

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 B, as the executrix of Taxpayer A's estate, is granted a period not to exceed six months from the date of this ruling letter to recharacterize Taxpayer A's Roth IRA V 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 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)(B) provides, in short, that a taxpayer shall not be permitted to make a qualified rollover distribution from a traditional IRA to a Roth IRA if his adjusted gross income for the taxable year of conversion exceeds $100,000.

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 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.

Section 1.408A-5 of the Income Tax Regulations, Question and Answer-6(c), provides, in short, that the election to recharacterize a contribution described in this A-6 may be made on behalf of a deceased IRA owner by his or her executor, administrator, or other person responsible for filing the final Federal Income Tax Return under section 6012(b)(1).

Code section 6012(b)(1) provides, in summary, that the return of a decedent shall be made by his executor, administrator, or other person charged with the property of such decedent.

In this case, Taxpayer A converted his traditional IRA U to Roth IRA V during 1998 in the belief that the adjusted gross income of Taxpayers A and B for 1998 did not exceed the limits found at Code section 408A(c)(3)(B). After the death of Taxpayer A, Taxpayer B discovered that Taxpayer A was ineligible to convert his IRA U to Roth IRA V. An attempt by Taxpayer B, as the executrix of Taxpayer A's estate, to have Company M, the custodian of Taxpayer A's Roth IRA V reconvert said Roth IRA to a traditional IRA did not succeed.

Taxpayers A and B timely filed their 1998 Federal Tax Return. As a result, Taxpayer A was eligible for relief under either Announcement 99-57 or Announcement 99-104. However, neither Taxpayer A, nor Taxpayer B, the executrix of his estate, met the due date(s) found therein. Therefore, it is necessary to determine if Taxpayer B, as executrix of Taxpayer A's estate, 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 traditional IRA to a Roth IRA since the adjusted gross income of Taxpayers A and B for 1998 exceeded $100,000. However, until Taxpayer B discovered otherwise while her accountant, Accountant D,

was preparing estate and income tax returns with respect to Taxpayer A after Taxpayer A's death, Taxpayers A and B erroneously believed that their adjusted gross income for 1998 did not exceed $100,000. Thus, until advised otherwise by Accountant D and Law Firm E, Taxpayer B believed that Taxpayer A's conversion of IRA U to Roth IRA V was valid.

Taxpayer B filed this request for section 301.9100 relief shortly after discovering that Taxpayer A's 1998 IRA conversion was improper and shortly after receiving advice from an attorney to do so. Calendar year 1998 is not a "closed" tax year.

The facts of this case, summarized above, indicate that Taxpayer A, if he had not died, would have been eligible for relief under section 301.9100. The Service believes that, pursuant to section 1.408A-5 of the Income Tax Regulations, Question and Answer-6(c), Taxpayer B, as the executrix of Taxpayer A's estate, may file for said relief as said executrix.

Thus, 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 a 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, 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 taxpayers who requested it. Section 6100(j)(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. It also assumes that an amended calendar year 1998 Federal Income Tax Return consistent with the ruling letter will be filed.

This ruling letter was prepared by Lawrence W. Heben of this Group. He may be contacted at

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,

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