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

200227042

Index No. 9100.00-00

APR 10 2002

T:EP:RA:T2

LEGEND:

Taxpayer A =

IRA A =

IRA B =

IRA C =

IRA D =

IRA W =

IRA X =

IRA Y =

IRA Z =

Company M =

Sum N =

Dear

This letter is in response to a letter dated
supplemented by additional correspondence dated

2857

submitted on your behalf by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations").

The following facts and representations have been submitted:

Taxpayer A maintained IRAs A, B, C, and D, individual retirement arrangements described in section 408(a) of the Internal Revenue Code (the "Code"), with Company M. In 1998, Taxpayer A converted IRAs A, B, C, and D to Roth IRAs W, X, Y and Z, also with Company M. The amount converted from the traditional IRAs to the Roth IRAs was Sum N. Taxpayer A timely filed her 1998 Federal Income Tax Return. With respect to calendar year 1998, Taxpayer A's adjusted gross income exceeded the limit found in section 408A(c)(3)(B)of the Code.

Taxpayer A's former financial advisor did not communicate to her that she was ineligible for a conversion unless she met the required income limits. The accountant who prepared Taxpayer A's 1998 return assumed that she had rolled IRAs A, B, C and D to another traditional IRA and did not report any portion of the converted IRA proceeds as taxable income on the 1998 or subsequent Federal Income Tax Returns.

In 2000, while preparing Taxpayer A's 1999 Federal Income Tax Return, the accountant found a notice indicating that Taxpayer A showed a balance in a Roth IRA. During a review of the 1998 return the accountant discovered that the rollover was to Roth IRAs W, X, Y and Z. At that time the accountant notified Taxpayer A who contacted her financial advisor. The financial advisor informed her that she had made a Roth rollover, that certain income limits had to be met and that the time to recharacterize the rollover was past. Until that time, Taxpayer A was unaware of her ineligibility for the 1998 Roth conversion. Therefore, Taxpayer A missed the deadlines provided in Announcement 99-57, 1999-24 I.R.B. 50 (June 14, 1999) and Announcement 99-104, 1999-44 I.R.B. 555 (November 1, 1999) which would have allowed Taxpayer A until December 31, 1999 to recharacterize the failed Roth conversion. This request for relief under section 301.9100-3 of the regulations was submitted prior to the Service's discovering that the recharacterization back to a traditional IRA was not made within the time limits found in the above announcements.

Based on the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the regulations, Taxpayer A be granted a period of not more than six months from the date of this ruling letter to

recharacterize her Roth IRAs W, X, Y and 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 (the "I.T. 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 the contribution.

Section 1.408A-5, Question and Answer-6 of the I.T. Regulations, 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, Question and Answer-2 of the I.T. Regulations, 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 301.9100-1, 301.9100-2, and 301.9100-3 of the 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 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 310.9100-2.

Section 301.9100-3 of the regulations provides that applications for relief that fall within section 301.9100-3 will be granted when that 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 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.

Announcement 99-57, 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, 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 her 1998 Federal Income Tax Return. As a result, she is eligible for relief under either Announcement 99-57 or Announcement 99-104. However, she missed the deadlines found in said Announcements. Therefore, it is necessary to determine if she is eligible for relief under the provisions of section 301.9100-3 of the regulations.

In this case, Taxpayer A was ineligible to convert her IRAs A, B, C and D to Roth IRAs W, X, Y and Z since her adjusted gross income exceeded $100,000. However, until she discovered otherwise, Taxpayer A believed that she was eligible to convert her traditional IRAs to Roth IRAs. Taxpayer A filed her request for section 301.9100 relief shortly after discovering that she was ineligible to convert traditional IRAs to Roth IRAs and, as noted above, before the Service discovered her 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 IRAs 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, we rule that Taxpayer A be granted a period of not more than six months from the date of this ruling letter to recharacterize her Roth IRAs W, X, Y, and Z to traditional IRAs.

This ruling assumes that the above IRAs qualify under section 408 of the Code at all relevant times.

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 hereto.

This letter is directed only to the taxpayer who requested it. Section 6100(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please contact

Sincerely yours,

Joyce E. Floyd
Manager, Employee Plans
Technical Group 2
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of letter ruling
Notice 437