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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIC: 9100.00-00

DEC 4 2002
T:EP:RA:T2

XXXXXXXXXXX
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XXXXXXXXXXX

LEGEND:

| | |
|---|---|
| Taxpayer A | = *** |
| Taxpayer B | = *** |
| IRA U | = *** |
| IRA V | = *** |
| IRA W | = *** |
| IRA X | = *** |
| Company M | = *** |
| Sum N | = *** |
| Sum O | = *** |

Dear ***:

This is in response to your letter dated ***, as supplemented by correspondence dated ***, *** and ***, 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 support your ruling request.

Taxpayer A maintained IRA U, an individual retirement account described in Code section 408(a), with Company M. During calendar year 1998, Taxpayer A converted IRA U to a Roth IRA, IRA V, also with Company M. At the time of the conversion the fair market value of IRA U was Sum N.

Taxpayer B, Taxpayer A's spouse, maintained IRA W, an individual retirement account described in Code section 408(a), with Company M. During calendar year 1998, Taxpayer B converted IRA W to a Roth IRA, IRA X, also with Company M. At the time of the conversion the fair market value of IRA W was Sum O.

Taxpayer A and his spouse, Taxpayer B timely filed a joint Federal Income Tax Return with respect to the 1998 calendar year. Taxpayers A and B's adjusted gross income for 1998 exceeded the limit prescribed in section 408A(c)(3)(B) of the Internal

Revenue Code. At the time they filed their 1998 federal income tax return, Taxpayers A and B were not aware of the income limitations found at Code section 408A(c)(3)(B).

At the time of filing the tax return, it was not apparent that Taxpayer A and Taxpayer B would exceed their modified adjusted gross income because the follow-up information relating to the identifying cost basis for certain stock transactions did not become available until close to the filing deadline for filing their 1998 Federal income tax return. In January 2000, Taxpayer A and Taxpayer B realized that they were ineligible to convert traditional IRA U to Roth IRA V and traditional IRA W to Roth IRA X. The discrepancy was brought to their authorized representative's attention. This request for relief was filed prior to the Service's discovering that Taxpayer A and Taxpayer B were not eligible to convert IRAs U and W to Roth IRAs V and X. Additionally, Taxpayers A and B were 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.

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 sixty days from the date of this ruling letter to recharacterize their Roth IRAs, IRA V and IRA X, respectively, to traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of Code and section 1.408A-5 of the federal Income Tax Regulations ("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 returns for the year of contributions.

Section 1.408A-5, Q&A-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 (as modified within the meaning of subparagraph (c)(3)(C)) 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 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 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 adjusted gross income derived from the joint return using the couple's combined income.

Sections 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 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 of the regulations 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 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 statue of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Announcement 99-57, 1999-24 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.

In this case, Taxpayer A and Taxpayer B were not eligible to convert traditional IRA U and IRA W into Roth IRA V and Roth IRA X since Taxpayer A's and Taxpayer B's combined modified adjusted gross income for 1998 exceeded $100,000. Taxpayer A and Taxpayer B timely filed their joint 1998 federal income tax return. As a result, they were eligible for relief under either Announcement 99-57 or Announcement 99-104. However, they missed the deadlines found in said Announcements. Taxpayer A and Taxpayer B were unaware that they were ineligible for the Roth IRA conversions until the year 2000. Therefore, it is necessary to determine whether the taxpayers are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A and Taxpayer B were ineligible for the 1998 Roth IRA conversion, Taxpayer A and Taxpayer B did not discover the disqualification until January 2000. Upon realizing the mistake, Taxpayer A and Taxpayer B brought the discrepancy to their authorized representative's attention. Taxpayer A and Taxpayer B made their request for relief to the Service before the Service discovered Taxpayer A's and Taxpayer B's ineligibility to convert IRA U to Roth IRA V and IRA W to Roth IRA X.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of section 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 Roth IRA V and Roth IRA X back to traditional IRAs. Specifically, the Service has concluded that you have met the requirements of clauses (i), and (iii) of section 301.9100-3(b)(1) of the regulations. Therefore, Taxpayer A and Taxpayer B are granted an extension of sixty days from the date of the issuance of this letter ruling to recharacterize Roth IRA V and Roth IRA X back to traditional IRAs.

This letter 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, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(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 have any questions concerning this ruling, please contact ***, at ***.

Sincerely yours,

(signed) JOYCE E. FLOYD

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

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose