200317028

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT - 7 2002

UIC: 9100.00-00

TIEP:PA:T3

LEGEND:

Taxpayer A:

Accountant B:

Date 1:

IRA U:

Roth IRA V:

Company M:

Dear Ms. :

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.

Prior to the date of conversion, Taxpayer A maintained IRA U, a traditional individual retirement account described in § 408 of the Internal Revenue Code.

On Date 1, 1998, Taxpayer A converted her IRA U to Roth IRA V which was intended to comply with the requirements of Code § 408A.

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

At the time of the purported IRA conversion, referenced above, Taxpayer A believed that she was eligible to convert her IRA U to Roth IRA V. However, her parents had made investments in mutual funds in her name as a savings plan for her eventual wedding. These mutual funds, as shown on Schedules B and D of Taxpayer A's

calendar year 1998 Federal Income Tax Form 1040, generated $10,875 in additional income for Taxpayer A with respect to calendar year 1998. As a result Taxpayer A was not eligible to convert her IRA U to Roth IRA V. Taxpayer A discovered that she had said additional mutual fund income after she had had "converted" her IRA U to Roth IRA V.

Taxpayer A filed an individual 1998 Federal Income Tax Return. Such return was not timely filed. On her 1998 Federal Income Tax Return, which was completed by her accountant, Accountant B, Taxpayer A reported adjusted gross income greater than $100,000. Thus, at the time that she filed her 1998 Federal Income Tax Return, Taxpayer A discovered that her conversion of IRA U to Roth IRA V was not in compliance with the rules under Code section 408A and that she was not eligible to make such a conversion.

As of the date of this ruling request, Taxpayer A had not recharacterized her Roth IRA V as a traditional IRA.

This request for relief under section 301.9100-3 of the Procedure and Administration Regulations was made by Taxpayer A through her accountant, Accountant B.

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 A, is granted a period not to exceed sixty days from the date of this ruling letter to recharacterize her 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.

In this case, Taxpayer A converted her traditional IRA U to Roth IRA V during 1998 in the belief that she was eligible to make said conversion. After she untimely filed her 1998 Federal income Tax return, Taxpayer A discovered that she was ineligible to convert her IRA U to Roth IRA V.

Taxpayer A did not file her individual 1998 Federal Tax Return in a timely manner. As a result, Taxpayer A was ineligible for relief under either Announcement 99-57 or Announcement 99-104. Therefore, it is necessary to determine if Taxpayer A 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 traditional IRA to a Roth IRA since the adjusted gross income of Taxpayer A for 1998 exceeded $100,000. However, until she discovered otherwise while her accountant, Accountant B, was preparing her income tax return, Taxpayer A erroneously believed that she was eligible to convert her IRA U to Roth IRA V. Additionally, although her adjusted gross income for 1998 exceeded $100,000, Taxpayer A only discovered that it would be so when she received information after she had "converted" her IRA U to Roth IRA V that she had received mutual fund income generated for her by investments made by her parents.

Taxpayer A filed this request for section 301.9100 relief after discovering that her 1998 IRA conversion was improper. With respect to Taxpayer A, calendar year 1998 is not a "closed" tax year.

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 clause (iii) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of sixty days 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 (if not already filed) will be filed.

This ruling letter was prepared by 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