200324058

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T2

UIC:9100.00-00

MAR 21 2003

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Legend:

Taxpayer A = **********

IRA V = **********
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Roth IRA W = **********
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Company M = **********

Employer N = **********

Company O = **********

Country Z = **********

Sum P = **********

Sum Q = **********

Dear **********

This letter is in response to the letter dated November 21, 2002, submitted by your authorized representative, as supplemented by correspondence dated January 15, 2003, 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 made in support of your ruling request:

Taxpayer A maintained IRA V, an individual retirement arrangement described in section 408(a) of the Internal Revenue Code ("Code"), with Company M. During calendar year 1998, Taxpayer A converted IRA V to a Roth IRA W, also with Company M. At the time of the conversion the fair market value of IRA V was sum P. Taxpayer A also made a Roth IRA contribution of sum Q in 1998.
At the time of the IRA V conversion and contribution referenced above, Taxpayer A resided in the U.S. However, Taxpayer A had recently returned from Country Z

where Taxpayer A had been on an assignment with Employer N from May 1994 through December 4, 1997.

Taxpayer A converted IRA V to Roth IRA W because Taxpayer A believed that such conversion was valid as long as Taxpayer A's taxable income did not exceed $100,000. At the time of the conversion Taxpayer A believed that her taxable income would not exceed $100,000. In addition, Taxpayer A was not aware that the Roth income limitations were based on modified adjusted income.

However, Taxpayer A was advised by her broker that if, for some reason, Taxpayer A's income exceeded the limitation Taxpayer A could recharacterize her conversion and contribution back to a regular IRA. Taxpayer A was not told of a time restriction for taking such action.

Although Taxpayer A received an extension of time to file her calendar year 1998 federal income tax return, Taxpayer A did not file said return on a timely basis due to complexities caused by Taxpayer A's foreign assignment in Country Z and personal problems that Taxpayer A experienced in late 1999 and in the year 2000.

In February 2001, Taxpayer A submitted her 1998 tax information to Company O for the preparation of Taxpayer A's 1998 federal and state income tax returns. Upon receiving completed information, Company O notified Taxpayer A in May 2002 that she was not eligible to convert IRA V to Roth IRA W because Taxpayer A's modified adjusted gross income exceeded $100,000. Taxpayer A was also advised that it was not possible to recharacterize Roth IRA W to a traditional IRA as the deadline for such recharacterization expired on December 31, 1999, for taxpayers who timely filed their 1998 federal income tax return.

Taxpayer A had several discussions with Company O and outside counsel during the summer of 2002 and was advised that the IRS had issued guidance with respect to the applicability of relief under section 301.9100-3 of the Regulations to Roth IRA recharacterization. Subsequently, Taxpayer A requested Company O to assist her in preparing and filing a request for relief under section 301.9100-3 of the Regulations.

This request for relief under section 301.9100-3 of the Regulations was submitted prior to the Service's discovering Taxpayer A's ineligibility to convert their traditional IRA V into Roth IRA W.

Based on the foregoing information you 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 (60) days from the date of this ruling letter to recharacterize Roth IRA W, back to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the 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, 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 (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 the 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 statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

In this case, Taxpayer A was not eligible to convert traditional IRA V to Roth IRA W since Taxpayer A's combined modified adjusted gross income for 1998 exceeded $100,000. Taxpayer A did not timely filed her 1998 Federal Income Tax Return. Taxpayer A was unaware that she was ineligible for the Roth IRA conversion. Therefore, it is necessary to determine if Taxpayer A is eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Taxpayer A was informed in May 2002 that she was not eligible to convert a traditional IRA to a Roth IRA. Upon discovering that she was ineligible to convert IRA V to Roth IRA W, Taxpayer A directed Company O to take all necessary steps to recharacterize Roth IRA W to a traditional IRA. Taxpayer A filed this request for relief under section 301.9100-3 of the Regulations before the Service discovered that Taxpayer A was ineligible to convert IRA V to Roth IRA W.

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 your Roth IRA W to a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clause (i) of section 301.9100-3(b)(1) of the Regulations. Therefore, pursuant to section 301.9100-3 of the Regulations, Taxpayer A is granted a period not to exceed sixty (60) days from the date of this ruling to recharacterize Roth IRA W back to a traditional IRA.

This ruling is based upon the condition that the 1998 and all other relevant federal income tax returns will be properly filed.

This letter assumes that the above IRAs referenced herein will meet the requirements of either section 408 or section 408A 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.

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

If you wish to inquire about this ruling, please contact ********** ********** .

Sincerely yours,

Joyce E. Floyd

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

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose