200346032

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 19 2003

Uniform Issue List: 408.00-00

T:EP:RA:T3

* * *
* * *
* * *
* * *

ATTN: * * *

Legend:

Taxpayer A:	* * *
Taxpayer B:	* * *
Taxpayers:	* * *
Company Q:	* * *
Company R:	* * *
Firm:	* * *
Tax Professional:	* * *
Date 1:	* * *

Dear Applicant:

This is in response to a ruling request dated July 23, 2003, as supplemented by correspondence dated August 12, 2003, 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 two individual retirement accounts ('IRA") as described in section 408(a) of the Internal Revenue Code ("Code"), with separate custodians, Company Q and Company R. Taxpayer B also maintained one IRA as described in section 408(a) of the Code with Company Q.

During calendar year 1999, Taxpayer A transferred and converted his two traditional IRAs totaling $5,001 into one Roth IRA account. Additionally, Taxpayer B transferred her traditional IRA totaling $46,251 into a Roth IRA account. Both Taxpayer A and Taxpayer B have made allowable regular contributions to their Roth IRA accounts at various times.

Taxpayers income in year 1999 consisted of wages, interest, dividends, state tax refunds, capital losses, pension distributions, proprietorship income and income from a partnership. The Taxpayers were not aware that the effect of combining all of their income sources would make them ineligible to make the traditional IRA to Roth IRA transfers they had made earlier in the year.

In July 1999, Taxpayer A and B engaged the Firm to provide them with tax services. In order to assist the Firm, Taxpayers provided documentation to the Firm estimating the various amounts of income they would have for the year, including a reference to the amount they had transferred to their Roth IRAs along with various summaries of the capital gains and losses, and other income.

In June 2000, while their 1999 Federal Tax Return (Form 1040) was under extension, Taxpayers A and B provided additional information to the Firm outlining all of their income for the year. The information included specific references to the amounts transferred from their traditional IRAs to the Roth IRAs.

On or about October 12, 2000, the Firm completed Taxpayers' joint 1999 Federal return and sent the return to the Taxpayers for filing. The return omitted the income from the traditional IRA to Roth IRA conversions. As the filing deadline was upon them, Taxpayers signed and mailed the return to the Internal Revenue Service. The return was timely filed.

The Firm did not raise the issue of the propriety of the traditional IRA to Roth IRA conversions or the need to recharacterize the Roth IRA balances back into traditional IRAs. The 1999 joint Federal return 1040 submitted as part of this ruling request indicates that Taxpayers A and B's adjusted gross income for that year exceeded $100,000. Furthermore, the return is dated Date 1, 2000.

After completion of the 1999 Federal return, Tax Professional left the employ of the Firm, but continued to provide income tax preparation and consulting services to the Taxpayers. In February 2001, Tax Professional attempted to amend the Taxpayers' 1999 Federal Tax return, which was later selected for audit. In December 2001, the Service auditor proposed a denial of the amended return.

In January 2002, Tax Professional attempted again to amend the Taxpayers' 1999 Federal return. The Service disallowed the request and in the process became aware of the traditional IRA to Roth IRA conversion income that had been omitted from the original return. The Service then proposed to assess tax on the income from the conversion, and also to assess penalties for excess contributions and early distributions.

Tax Professional did not inform the Taxpayers of the possibility of a recharacterization until September 2002. This letter ruling request was filed with the Service shortly after the Taxpayers became aware of the necessity to obtain approval through the letter ruling process of a late request to recharacterize their Roth IRAs as traditional IRAs.

Based on the above, you request the following letter ruling:

That Taxpayer A and B are granted a period not to exceed sixty days from the date of this ruling to recharacterize their Roth IRAs to traditional IRAs.

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 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 contribution.

Section 1.408A-5, Question and Answer-6, of the Income Tax 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.

Section 1.408A-4, Q&A-2 of the Income Tax 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 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 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(a) 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 taxpayers 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(e)(2) of the Regulations requires that the taxpayer "must submit a detailed affidavit describing the events that led to the failure to make a valid regulatory election

and to the discovery of the failure. When the taxpayer relied on a qualified tax professional for advice, the taxpayer's affidavit must describe the engagement and responsibilities of the professional as well as the extent to which the taxpayer relied on the professional."

Section 301.9100-3(3)(3) of the Regulations requires that "[t]he taxpayer must submit detailed affidavits from the individuals having knowledge or information about the events that led to the failure to make a valid regulatory election and to the discovery of the failure. These individuals must include the taxpayer's return preparer, any individual (including an employee of the taxpayer) who made a substantial contribution to the preparation of the return, and any accountant or attorney, knowledgeable in tax matters, who advised the taxpayer with regard to 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 letter ruling granting relief under this section.

In this case, Taxpayers A and B were ineligible, for tax year 1999, to convert their traditional IRAs to Roth IRAs since they were subject to and exceeded the $100,000 AGI limit. Also, Taxpayer A and B reasonably relied on a qualified tax professional, and the tax professional failed to advise the Taxpayers that they had to recharacterize their conversion(s) prior to the deadline. Furthermore, with respect to Taxpayers A and B, 1999 is not a "closed" tax year. Therefore, it is necessary to determine whether, under this set of facts, Taxpayers A and B are eligible for relief under the provisions of section 301.9100-3 of the regulations.

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 requirement of clauses (iii) and (v) 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 that 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.

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.

Finally this letter ruling only applies to the traditional IRA amounts converted to Roth IRAs during calendar year 1999. This letter ruling does not authorize the conversion, by transfer or otherwise, of allowable contributions, or earnings thereon, either Taxpayer A or Taxpayer B, or both Taxpayers, has made to his or her Roth IRAs.

Sincerely,

Frances V Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3