Internal Revenue Service

Department of the Treasury
Washington, DC 20224

200149042

Index No.: 9100.00-00

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T1

JUL 31 2001

Legend :

Taxpayer A.....

Taxpayer B.....

IRA X.....

IRA Y.....

IRA Z.....

Company M.....

Sum N.....

Sum O.....

Sum P.....

Dear :

This is in response to a letter dated November 7, 2000, as supplemented by correspondence dated June 28, 2001, and July 19, 2001, submitted 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 were submitted in connection with your request.

Taxpayer A maintained IRA X and IRA Y, individual retirement arrangements described in section 408(a) of the Internal Revenue Code (the "Code"), with Company M. Taxpayer A's spouse, Taxpayer B, maintained IRA Z, an individual retirement arrangement described in section 408, with Company M. In 1998, Taxpayers A and B converted IRAs X, Y and Z, respectively, to Roth IRAs with Company M. The amounts in IRAs X, Y and Z were Sum N, Sum O, and Sum P, respectively. Taxpayers A and B jointly and timely filed their calendar year

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1998 federal income tax return. With respect to calendar year 1998, Taxpayer A's and Taxpayer B's adjusted gross income exceeded the limit found in section 408A(c)(3)(B).

Taxpayers A and B were unaware that they were ineligible to establish Roth IRAs until preparing their 1999 income tax return in early 2000. The funds remained in the Roth IRA accounts until May of 2000, when IRAs X, Y and Z were recharacterized as traditional IRAs by trustee-to-trustee transfers to traditional IRAs with Company M. This request for section 9100 relief was submitted prior to the Service's discovering Taxpayer A's or Taxpayer B's ineligibility to convert their traditional IRAs into Roth IRAs and prior to discovering that the recharacterization back to traditional IRAs was not made within the time limits found 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).

Based on your submission and the above facts and representations, you request rulings that: (1) pursuant to section 301.9100-3 of the regulations, the recharacterization of Taxpayer A's and Taxpayer B's IRAs X, Y and Z in May of 2000, which was after the dates prescribed by Announcements 99-57 and 99-104, back to traditional IRAs, was timely; and (2) the ten percent additional income tax under Code section 72 for early withdrawals does not apply to the recharacterizations of May of 2000.

With respect to ruling request (1), Code section 408A(d)(6) and section 1.408A-5 of the federal Income Tax Regulations (the "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 originally 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 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 that an individual with an 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, Q&A-2 of the regulations provides 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 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, 301.9100-3 of the regulations provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of the 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 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 Internal Revenue Service (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 or 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 or 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, Taxpayers A and B were not eligible to convert their IRAs to Roth IRAs since their combined adjusted gross income exceeded $100,000. Taxpayers A and B timely filed their joint 1998 federal income tax return. Thus, they were eligible for relief under Announcements 99-57 and 99-104. However, they missed the deadlines provided under these announcements. Therefore, it is necessary to determine whether they are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Taxpayers A and B were not aware of their ineligibility to convert their traditional IRAs into Roth IRAs until the beginning of calendar year 2000 when they were preparing their 1999 return. Upon realizing their mistake, the taxpayers requested trustee-to-trustee transfers to recharacterize IRAs X, Y and Z as traditional IRAs. The transfers were effected by Company M in May of 2000. The 1998 taxable year is not closed under the statute of limitations, Taxpayers A and B requested relief from the Service before the Service discovered their failure to make a timely election to recharacterize their Roth IRAs back to traditional IRAs pursuant to Announcements 99-57 and 99-104. Thus, the taxpayers satisfy the requirements of clause (i) and clause (iii) of section 301.9100-3 of the regulations. Accordingly, we rule with respect to ruling request (1) that, pursuant to section 301.9100-3 of the regulations, the recharacterization of Taxpayer A's and Taxpayer B's IRAs back to traditional IRAs, which occurred in May of calendar year 2000 and which was after the dates prescribed by Announcements 99-57 and 99-104, was timely.

With respect to your second ruling request, in order to effectuate the grant of relief under section 301.9100-3 of the regulations made in response to your first ruling request, Taxpayers A and B must file an amended calendar year 1998 Federal Income Tax Return prior to the expiration of the statute of limitations applicable to the 1998 year which will reflect the recharacterizations made during 2000. Assuming Taxpayers A and B timely file an amended return, this second ruling request is moot.

This letter is directed only to the taxpayer who requested it. Code section 6110(j)(3) 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.

Sincerely yours,

(Signed) John Swieca

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

cc: