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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200209060

UIL No.: 9100.00-00

DEC - 5 2001

T:EP:RA:T1

Legend :

Taxpayer A.....

IRA V.....

IRA W.....

Company M.....

Sum N.....

Sum O.....

Dear :

This is in response to a letter dated June 8, 2001, 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 an individual retirement arrangement, IRA V, described in section 408 of the Internal Revenue Code (the "Code"), with Company M. In 1999, Taxpayer A converted IRA V into Roth IRA W, with Company M. The amount transferred from IRA V to IRA W was Sum N. In 1999, Taxpayer A also contributed an additional amount, Sum O, to IRA W. Taxpayer A timely filed his calendar year 1999 federal income tax return. With respect to calendar year 1999, Taxpayer A's modified adjusted gross income exceeded the limit found in Code section 408A(c)(3)(B).

In April of 2000, Taxpayer A, realizing he was not eligible for the conversion because his modified adjusted gross income exceeded the $100,000 limit, attempted to have IRA W converted back to a traditional IRA by April 15, 2000. By that date Taxpayer A had filed a recharacterization application form with Company M intending to effect a complete recharacterization of IRA W. However, the recharacterization was only effective with respect to Sum O, plus net income on Sum O, and not Sum N. Not until December 2000 did Taxpayer A become aware that a complete recharacterization of IRA W did not occur. After repeated attempts to recharacterize IRA W, Taxpayer A was informed by Company M in April of 2001

that it was too late to recharacterize the remaining balance, Sum N. 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 IRA V into a Roth IRA or Taxpayer A's failure to recharacterize the full balance of IRA W back to a traditional IRA.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted an extension to recharacterize IRA W back to a traditional IRA.

With respect to your request for relief, Code section 408A(d)(6) and section 1.408A-5 of the federal Income Tax Regulations (the "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 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 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 that an individual with an 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 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.

Sections 301.9100-1, 301.9100-2, and 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 Internal Revenue, 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.

In this case, Taxpayer A was not eligible to convert IRA V to IRA W since his modified adjusted gross income exceeded $100,000. Taxpayer A timely filed his 1999 federal income tax return. Therefore, it is necessary to determine whether he is eligible for relief under the provisions of section 301.9100-3 of the regulations.

Taxpayer A became aware of his ineligibility to convert his traditional IRA into a Roth IRA in April of 2000 (prior to April 15) and immediately requested that Company M recharacterize Roth IRA W back to a traditional IRA. Taxpayer A's intent was to effect a complete recharacterization of IRA W. However, the recharacterization of IRA W was not effected on a timely basis, except with respect to Sum O, because Company M, based on the information furnished by Taxpayer A on its recharacterization application form, believed that Taxpayer A was electing to make only a partial recharacterization of IRA W. Taxpayer A acted reasonably and in good faith as he believed that his filing of the recharacterization application form would timely effect a complete recharacterization of IRA W. Upon learning that this did not occur, he made repeated attempts to have Company M complete the recharacterization of IRA W.

Taxpayer A then requested relief from the Service, before the Service discovered Taxpayer A's ineligibility to convert his traditional IRA into a Roth IRA or Taxpayer A's failure to timely convert the full balance of Roth IRA W back to a traditional IRA. The 1999 calendar taxable year is not closed under the statute of limitations. Thus, Taxpayer A satisfies the requirements of clause (i) and clause (iii) of section 301.9100-3(b)(1) of the regulations. Accordingly, you are granted an extension of six months from the date this ruling letter is issued to so recharacterize.

This letter assumes that the above IRAs qualify as IRAs within the meaning of Code section 408 at all relevant times.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent. Should you have any concerns regarding this ruling, please contact at

Sincerely yours,

(signed) John Swieca

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

Enclosures:
Notice 437
Deleted copy of ruling