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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200228024

4/10/02

UIL No.: 9100.00-00

T:EP:RA:T1

Legend :

Taxpayer A.....

IRA T.....

IRA U.....

IRA V.....

IRA W.....

IRA X.....

IRA Y.....

IRA Z.....

Company M.....

Company N.....

Sum O.....

Sum R.....

Sum S.....

Sum T.....

Dear :

This is in response to a letter dated February 24, 2002, as supplemented by correspondence dated March 8, 2002, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). You submitted the following facts and

representations in connection with your request.

Taxpayer A maintained four individual retirement arrangements, IRAs T, U, V, and W described in section 408 of the Internal Revenue Code (the "Code"). IRA T was maintained by Company M and IRAs U, V, and W were maintained by Company N. In 1998, Taxpayer A converted IRAs T, U, V and W into Roth IRAs X, Y and Z with Company N. The amounts converted from IRAs T, U, V and W were Sum O, Sum R, Sum R, and Sum S, respectively. Taxpayer A timely filed a joint federal income tax return with her spouse for calendar year 1998. At the time of filing, Taxpayer A believed that their modified adjusted gross income was within the limit found in section 408A(c)(3)(B) due to an error in calculating adjusted gross income for that year. In 2001, Taxpayer A discovered that their 1998 modified adjusted gross income should have included an additional sum in the amount of Sum T, and an amended return would have to be filed for that year. Taxpayer A recently became aware that this increase would cause the couple's modified adjusted gross income to exceed the limit found in section 408A(c)(3)(B) for 1998.

Taxpayer A was unaware that she was ineligible for the Roth IRA conversions until after recalculating in 2001 her and her spouse's modified adjusted gross income for 1998. Therefore, Taxpayer A missed the deadlines provided 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), which would have allowed Taxpayer A to recharacterize the failed Roth conversions until December 31, 1999. Recently, Taxpayer A became informed that she was ineligible for the 1998 Roth conversions due to the $100,000 limitation in Code section 408A(c)(3)(B). This request for section 301.9100 relief was submitted prior to the Service's discovering Taxpayer A's ineligibility to convert her traditional IRAs into Roth IRAs.

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 be granted a period not to exceed six months from the date of this ruling letter to recharacterize her Roth IRAs X, Y, and Z back to a traditional IRA or IRAs.

With respect to your ruling request, 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. 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 (AGI) 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 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.

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, Taxpayer A was not eligible to convert her traditional IRAs to Roth IRAs since the combined modified adjusted gross income of Taxpayer A and her spouse exceeded $100,000. Taxpayer A timely filed a joint 1998 federal income tax return. Thus, she was eligible for relief under Announcements 99-57 and 99-104. However, she missed the deadlines provided under these announcements because she was unaware that she was ineligible for the Roth IRA conversions until after she recalculated their modified adjusted gross income for 1998 in 2001. Therefore, it is necessary to determine whether she is eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A was ineligible for the 1998 Roth IRA conversions, she was unaware of her ineligibility until after she discovered her mistake in calculating modified adjusted gross income for 1998. Upon realizing her mistake, Taxpayer A requested relief from the Service before the Service discovered the failure to make a timely election to recharacterize Roth IRAs X, Y and Z back to a traditional IRA or IRAs pursuant to Announcements 99-57 and 99-104. The statute of limitations is not closed with respect to Taxpayer A's 1998 federal income tax return. Thus, Taxpayer A satisfies the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the regulations. Accordingly, we rule that, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period not to exceed six months from the date of this letter to recharacterize her Roth IRAs X, Y and Z back to a traditional IRA or IRAs.

This letter assumes that the above IRAs qualify under 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

Sincerely yours,

for

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

Enclosures:
Deleted copy of letter
Notice 437