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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200245061

Uniform Issue List: 408.00-00

AUG 14 2002

T:EP:RA:T1

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

Company M =

Company N =

Dear :

This is in response to a ruling request dated June 25, 2002, as supplemented by additional correspondence dated August 7, 2002, from your authorized representative, in which you request relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("Regulations").

The following facts and representations have been submitted:

Taxpayer A was discharged from the Army in January, 1999. At that time, he rolled his traditional individual retirement account (IRA X) of $56,920 to Roth IRA Y. In March of 1999, Taxpayer A married Taxpayer B. Subsequent to the purported transaction, Taxpayers A and B discovered that their combined adjusted gross income ($) for calendar year 1999 exceeded the limit found at section 408A(c)(3)(B) of the Internal

Revenue Code ("Code"). At the time of the purported conversion, Taxpayers A and B were unaware they were not eligible to convert their traditional IRAs to Roth IRAs.

Taxpayers A and B hired Company M to prepare their 1999 joint Federal income tax return. During the preparation of that return, Taxpayer's return preparer informed the Taxpayers that Taxpayer A was ineligible for the Roth conversion because their combined adjusted gross income exceeded the allowable amount and that Taxpayer A would need to recharacterize his Roth IRA Y back to a traditional IRA. On March 30, 2000, Taxpayers A and B transmitted papers to their return preparer which they thought were sufficient to convert all of Taxpayer B's 2000 Roth IRA Y contributions back to a traditional IRA.

In August of 2000, Taxpayers A and B engaged Company N to prepare their 2000 income tax return. Company N received most of Taxpayers A and B's information on April 2, 2001. However, the information was not complete at that time and therefore, Company N requested an extension of time, on Form 4868, to complete the return. When the 2000 joint Federal income tax return was prepared in May 2001, a manager of Company N discovered that Taxpayers A and B had not properly recharacterized the 1999 IRA conversion. The manager informed Taxpayers A and B that the time to make the election had passed and suggested they seek "9100 relief" to request an extension of time to make the election.

As of the date of this request, to the best of Taxpayer A and B's knowledge, the Internal Revenue Service has not discovered Taxpayers' failure to make the election to recharacterize Roth IRA Y to a traditional IRA.

Based on the foregoing facts and representations, you have requested the following ruling: that, pursuant to sections 301-9100-1 and 301-9100-3 of the Regulations, Taxpayers A and B are granted a period not to exceed 60 days from the date of this ruling letter to make an election under section 1.408A-5 of the Regulations to recharacterize Taxpayer A's Roth IRA Y to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, Code section 408A(d)(6) and section 1.408A-5 of 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 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, 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 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, 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.

Section 301.9100-1, 301.9100-2, and 301.9100-3 of the Procedure and Administration Regulations, in general, 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 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 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 temporary 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's 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 temporary 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.

Section 301.9100-3(c)(1)(i) of the Regulations indicates that the interests of the government are prejudiced if granting relief will result in a taxpayer (or taxpayers, if more than one taxpayer is affected by the tax consequences of the election) having a lower tax liability in the aggregate for all years to which the election applies than the taxpayer (or taxpayers, if more than one is affected) would have had if the election had been made on a timely basis.

When a taxpayer is unable to meet the requirements of section 301.9100-2 of the Regulations for an automatic extension of time to make an election, as is the case here, section 301.9100-3 indicates that relief will be granted if the taxpayer provides evidence establishing that: the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

In this case, Taxpayers A and B were ineligible to convert Taxpayer A's traditional IRA X to Roth IRA Y since their adjusted gross income exceeded $100,000. However, until they discovered otherwise, which discovery occurred after Taxpayer A "converted" IRA X to Roth IRA Y, Taxpayers A and B were unaware of the requirements of section 1.408A-5 of the Regulations. Taxpayers A and B filed this request for section 301.9100 relief after filing their joint 1999 Federal Income Tax Return and after being advised to take such action by a manager of Company N. With respect to Taxpayers A and B, 1999 is not a "closed" tax year. Finally, prior to Taxpayer A's and B's filing this request for relief under sections 301.9100-1 and 301.9100-3, the Internal Revenue Service had not discovered Taxpayer A and B's ineligibility to convert IRA X to Roth IRA Y.

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 IRA as a traditional IRA. In addition, we believe that granting relief will not

prejudice the interests of the government. 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, you are granted an extension of 60 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 which may be applicable thereto.

This ruling is based on the assumption that IRA X and Roth IRA Y meet the requirements Code sections 408 and 408A (where applicable), respectively, at all relevant times.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k) provides that it may not be used or cited by others as precedent.

Copies of this ruling have been sent to your authorized representatives pursuant to a power of attorney on file in this office.

Should you have any questions concerning this letter ruling, please contact
T:EP:RA:T1 of my staff at

Sincerely yours,

(Signed)

Andrew E. Zuckerman,
Manager, Employee Plans
Technical Group 1
Tax Exempt and Government
Entities Division

Enclosures:
Deleted Copy of the Ruling
Notice 437

cc: