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

200247058

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Index No. 9100.00-00

AUG 29 2002

T:EP:RA:T2

LEGEND:

Taxpayer A =

Taxpayer B =

IRA C =

IRA D =

IRA E =

IRA F =

IRA G =

Company M =

Company N =

Sum P =

Sum O =

Dear :

This letter is in response to a letter dated supplemented by additional correspondence dated submitted on your behalf 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 have been submitted:

Taxpayer A and B maintained IRA C and IRA D, individual retirement arrangements described in section 408 of the Internal Revenue Code, (the "Code"), with Company M. In 1999, Taxpayers A and B converted IRAs C and D into Roth IRAs E, F, and G also with Company M. The amount converted from IRA C to IRA E was Sum P and the amount converted from IRA D to IRAs F and G was Sum O.

Taxpayer A and B's tax prepared advised them that due to a capital gain their joint income for 1999 exceeded the $100,000 limit found in section 408A(c)(3)(B) of the Internal Revenue Code and that they would need to recharacterize Roth IRAs E, F, and G back to traditional IRAs. Taxpayer A and B authorized the tax preparer to contact Company N with instructions to recharacterize the Roth IRAs to traditional IRAs. The tax preparer contacted Company N and requested that the recharacterization be made before April 17, 2000. During the preparation of their year 2000 tax return, Taxpayers A and B discovered that, due to an oversight by Company N the recharacterizations were not made. Taxpayer A and B timely filed their calendar years 1999 and 2000 Federal Income Tax Returns. This request for relief under section 301.9100-3 of the Regulations was submitted prior to the Service's discovering Taxpayer A and B's ineligibility to convert IRAs C and D into Roth IRAs or Taxpayer A and B's failure to recharacterize Roth IRAs E, F, and G back to traditional IRAs.

Based on the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayers A and B be granted a period of not more than six months from the date of this ruling letter to recharacterize Roth IRAs E, F and G to traditional IRAs.

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

Section 1.408A-5, Question and Answer-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 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, Question and Answer-2 of the I.T. Regulations, provides, in summary, that an individual with modified adjusted gross in excess of $100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during a 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) of the regulations provides, that the Commissioner of the Internal Revenue Service, in his discretion, may grant a reasonable extension of 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 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 310.9100-2. 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 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 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, Taxpayers A and B were not eligible to convert traditional IRAs C and D into Roth IRAs E, F and G since Taxpayer A and B's combined modified adjusted gross income for 1999 exceeded $100,000. Taxpayer A and B timely filed their 1999 joint federal income tax return. Therefore, it is necessary to determine whether the taxpayers are eligible for relief under the provisions of section 301.9100-3 of the Regulations.

In this case, Taxpayers A and B were ineligible to covert their IRAs to Roth IRAs since Taxpayer A and B's combined adjusted gross income exceeded $100,000. However, Taxpayers A and B requested that the Roth IRAs be recharacterized as traditional non-Roth IRAs and until they discovered otherwise, believed that the recharacterization had been completed. Upon realizing that the recharacterization had not been completed in a timely manner, Taxpayers A and B requested an extension of time to perform the recharacterization. Calendar year 1999 is not a "closed" tax year.

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 requirements of clauses (i), (ii) and (v) of section 301.9100-3(b)(1) of the Regulations. Therefore, you are granted an extension of six months from the date of the issuance of this letter ruling to so recharacterize.

This ruling assumes that that the above IRAs qualify under section 408 of the Code at all relevant times.

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 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.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions concerning this ruling, Please contact

Sincerely yours,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc: