200303060

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIC: 9100.00-00

OCT 21 2002

T:EP:RA:T2

Legend:

Taxpayer A =
Taxpayer B =
IRA M =
IRA N =
Roth IRA O =
Roth IRA P =
Company Z =

Dear :

This is in response to your letter dated January 11, 2002, addressed to Associate Chief Counsel and received in our office on July 23, 2002, as supplemented by letters dated August 29, 2002, and October 1, 2002, 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 support your ruling request.

Taxpayer A and Taxpayer B, married taxpayers, maintained IRA M and IRA N respectively, which are individual retirement arrangements (" traditional IRAs") described in section 408(a) of the Internal Revenue Code (the "Code"). These traditional IRAs were maintained with Company Z.

Taxpayer A retired in 1998. "Normal" income for the year was only $. However, Taxpayer A reported a gain of $ from the sale of his former business, a one-time transaction which caused a modified adjusted gross income in excess of the $100,000 limit prescribed in section 408A(c)(3)(B) of the Code.

Prior to the "conversion" of traditional IRA M and IRA N to Roth IRA O and Roth IRA P respectively, Taxpayer A and Taxpayer B were not advised by their tax preparer or their financial advisor that they were ineligible to convert their respective traditional IRAs to their respective Roth IRAs. Taxpayer A and Taxpayer B timely filed their 1998

individual joint tax return and included 25% of the income related to the conversion. Taxpayer A and Taxpayer B had elected to spread the conversion over four years as permitted by the Internal Revenue Code at the time of the conversion.

The tax preparer again failed to inform Taxpayer A and Taxpayer B that they were ineligible for the conversion of their traditional IRAs to Roth IRAs and that they needed to recharacterize the amounts in their Roth IRAs. Additionally, Taxpayer A and Taxpayer B were unaware of the time limits provided in Announcements 99-57 and 99-104 for recharacterizing the amounts that had been converted from their traditional IRAs to their Roth IRAs.

In April of 2000, Taxpayer A and Taxpayer B filed an amended 1998 return 1040X and reported the entire amount of the traditional IRAs and paid the penalty for early withdrawal. Despite the filing of the amended return 1040X and the payments of tax on the funds as if they had been removed from the traditional IRA accounts, the original traditional IRA accounts and associated gains and losses remain in the respective separate Roth IRA accounts and have been untouched by Taxpayer A and Taxpayer B or their respective representatives.

Based on the above information, Taxpayer A and Taxpayer B , through their authorized representative, request the following letter ruling:

> That, pursuant to section 301.9100-3 of the regulations, Taxpayer A and Taxpayer B are granted a period not to exceed sixty (60) days from the date of this ruling letter to recharacterize their Roth IRAs to their traditional IRAs.

With respect to the request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the Income Tax Regulations ("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 returns for the year of 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 recharaterize 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.

Section 408A(c)(3) of the Code, provides, in relevant part, that an individual with adjusted gross income ("AGI") 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 to a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2 of the I.T.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.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the regulations, in general, 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 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 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 either to make or to 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 statue of limitations before the taxpayer's receipt of a ruling granting relief under this section.

[illegible] 1998 Federal Income Tax Return would have until [illegible] an amount that had been converted from a

9-24 I.R.B. 555 (November 1, 1999), provided that a 998 Federal Income Tax Return would have until ize an amount that had been converted from a

ed their 1998 Federal Income Tax Return. As a nder Announcement 99-57 or Announcement 99- adlines found in said Announcements. Therefore, it e eligible for relief under the provisions of section

nd B were ineligible to convert their traditional IRA M IRA P since their adjusted gross income exceeded [illegible] and B believed that th IRA O and Roth e and the preparer onal IRAs to Roth that they were tive Roth IRA O and ailure to comply with

[illegible] taxpayer who timely filed his/her 19 October 15, 1999, to recharacterize traditional IRA to a Roth IRA.

Announcement 99-104, 199 taxpayer who timely filed his/her 19 December 31, 1999, to recharacter traditional IRA to a Roth IRA.

Taxpayers A and B timely fil result, they were eligible for relief u 104. However, they missed the de is necessary to determine if they ar 301.9100-3 of the regulations.

In this case, Taxpayers A ar [illegible] IRA N to Roth IRA O and Roth $100,000. However, until they discovered otherwise, Taxpayers A a they were eligible to convert their traditional IRA M and IRA N to Ro IRA P because they reasonably relied on their tax preparer for advic failed to advise them that they were ineligible to convert their traditio IRAs. Taxpayers A and B filed this request shortly after discovering ineligible to convert their traditional IRA M and IRA N to their respec Roth IRA P and before the Service independently discovered their f the Announcements referenced above.

With respect to the request for relief, we believe that, based on the information submitted and the representations herein, the requirements of section 301.9100-1 and 301.9100-3 of the regulations have been met and that Taxpayers A and B have acted reasonably and in good faith with respect to making the election to recharacterize Roth IRA O and P to traditional IRAs. Specifically, the Service concludes that Taxpayers A and B have met the requirements of clauses (i), (iii) and (v) of section 301.9100-3(b)(1) of the regulations. Thus, pursuant to section 301.9100-3, Taxpayers A and B are granted a period not to exceed sixty (60) days from the date of this ruling letter to recharacterize their Roth IRAs to their traditional IRAs.

This letter assumes 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 assumes that Taxpayers A and B will file a calendar year 1998 Federal Income Tax Return consistent therewith if they have not already done so.

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,

(signed) JOYCE E. FLOYD

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

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