UIL No.: 9100.00-00

200317037

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

December 11, 2002

T:EP:RA:T1

Legend:
Taxpayer A
Taxpayer B
Individual C
IRA W
IRA X
IRA Y
IRA Z
Company M
Company N
Company P.

Dear

This is in response to a letter dated January 10, 2002, submitted by your authorized representative, in which you requested relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). The following facts and representations support your ruling request.

Taxpayer B maintained IRA W, an individual retirement arrangement (IRA) described in section 408(a) of the Internal Revenue Code (the "Code"), with Company M. During calendar year 2000, Taxpayer B converted IRA W to a Roth IRA, IRA Y, also with Company M. Taxpayer B also maintained IRA X, an IRA described in section 408(a), with Company N. During calendar year 2000, Taxpayer B converted IRA X to a Roth IRA, IRA Z, also with Company N.

Taxpayer B is married to Taxpayer A. Taxpayer A owns Company P. Prior to the IRA conversions, Taxpayers A and B did not know the total amount of income that would be received from Company P for the year 2000. Taxpayers A and B's joint federal income tax return for the year 2000 was completed and filed with an extension on August 22, 2001. The return reported that Taxpayers A and B's adjusted gross income for 2000

exceeded the limit found at section 408A(c)(3)(B) of the Code. Thus, Taxpayer B was not eligible to convert the traditional IRAs to Roth IRAs.

Taxpayer B was advised by Individual C that she could recharacterize the Roth IRAs before December 31, 2001. Taxpayer B relied on Individual C's advice and requested one of the trustees of the Roth IRAs, during October 2001, to recharacterize the Roth IRA to a Traditional IRA. The trustee informed Taxpayer B that the time had passed to make such a recharacterization.

As of the date of this ruling request, Taxpayer B had not recharacterized her Roth IRAs as traditional IRAs.

Based on the above you, through your authorized representative, request that you be allowed to recharacterize the year 2000 Roth conversion of IRA Y along with all income, losses, and additional contributions to a traditional IRA. You also requested that you be allowed to recharacterize the year 2000 Roth conversion of IRA Z along with all income or losses to a traditional IRA. You based your request on the relief provided by section 301.9100-3 of the regulations.

With respect to the contributions made to IRAs Y and Z when they were established, section 408A(d)(6) of the 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 contributions.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(c)(3) of the Code, 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 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 fax 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 adjusted gross income derived from the joint federal 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(a) 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)) 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 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.

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.

Taxpayer B's 2000 federal income tax return was timely filed. Since her combined adjusted gross income with Taxpayer A exceeded $100,000, she was not eligible to convert IRAs W and X into Roth IRAs. Therefore, it is necessary to determine if she is eligible for relief under the provisions of section 301.9100-3 of the regulations.

Taxpayer B was ineligible to convert her traditional IRAs, IRA W and IRA X to Roth IRAs, IRA Y, and IRA Z, respectively, since her combined adjusted gross income with Taxpayer A exceeded $100,000. Taxpayer B was not aware of her ineligibility to convert traditional IRAs W and X into Roth IRAs until the filing of her joint federal income tax return. However, until she discovered otherwise, Taxpayer B believed that she was eligible to convert her IRAs W and X to Roth IRAs. Taxpayer B was advised by her tax advisor, Individual C, that she could recharacterize the Roth IRAs before December 31, 2001. Taxpayer B requested one of the trustees of the Roth IRAs to recharacterize the Roth IRA to a Traditional IRA and was told that the time had passed to make such a recharacterization. Taxpayer B filed this request for section 301.9100 relief before the Service discovered her ineligibility to convert IRA W and IRA X into Roth IRAs. The 2000 tax year is not closed under the statute of limitations.

Based on the information submitted and the representations contained herein, we have concluded that 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), (iii), and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of sixty (60) days from the date of the issuance of this letter ruling to recharacterize IRAs Y and Z (including any contributions and earnings) back to traditional IRAs.

This ruling is predicated on IRAs W, X, Y, and Z meeting the requirements of sections 408 and 408A of the Code at all relevant times.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or I. T. Regulations which may be applicable.

This letter is directed only to the taxpayer who requested it. Section 6100(j)(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,
Andrew E. Zuckerman

Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling