TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200217058

JAN 30 2002

UIC: 9100.00-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

IRA X:

Roth IRA Y:

IRA Z:

Roth IRA W:

Company L:

Company M:

Accounting Firm N:

Date 1:

Date 2:

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Country K:

Dear

This is in response to the , letter, submitted by your authorized representative on your behalf, as supplemented by correspondence dated , in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations. The following facts and representations support your ruling request.

Taxpayer A maintained IRA X, an individual retirement arrangement described in Code section 408(a), with Company L. On Date 1, 1998, Taxpayer A converted IRA X to a Roth IRA, Roth IRA Y, also with Company L.

Taxpayer A also maintained IRA Z, an individual retirement arrangement described in Code section 408(a) with Company M. On Date 1, 1998, Taxpayer A converted IRA Z to a Roth IRA, Roth IRA W, also with Company M.

At the time of the IRA conversion referenced above, Taxpayer A resided in Country K. Taxpayer B, an enrolled agent, advised Taxpayer A to convert her IRAs X and Z to Roth IRAs Y and W because Taxpayer B, who prepared Taxpayer A's 1998 Federal Income Tax Return, believed that Taxpayer A's conversion of her traditional IRAs to Roth IRAs was valid since Taxpayer A's adjusted gross income, as shown on the 1998 federal Income Tax Return which she prepared, did not exceed $100,000. Thus, Taxpayer A, whose filed her 1998 Federal Income Tax Return as "Head of Household" believed, on Date 1, 1998, that her 1998 taxable income did not exceed $100,000.

Taxpayer A engaged Accounting Firm N to prepare her 1999 Federal Income Tax Return. During the preparation of said return, on Date 2, 2001, Accounting Firm N advised Taxpayer A that her 1998 Federal Income Tax Return was erroneous because she failed to report income that she earned outside of the United States. Accounting Firm N subsequently prepared an amended 1998 Federal Income Tax Return for Taxpayer A which indicated that her 1998 adjusted gross income exceeded $100,000. Thus, Taxpayer A was ineligible to convert her traditional IRAs, IRAs X and Z to Roth IRAs, IRAs Y and W.

Accounting Firm N subsequently filed this request for relief under section 301.9100-3 of the Procedure and Administration Regulations on behalf of Taxpayer A.

This request for relief under section 301.9100-3 of the Procedure and Administration Regulations was filed with the Internal Revenue Service prior to the Service's discovering that Taxpayer A was not eligible to convert her IRAs X and Z to

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Roth IRAs Y and W and also prior to the Service's discovering that Taxpayer A had not timely recharacterized her Roth IRAs Y and W as traditional IRAs. As of the date of this ruling request, Taxpayer A's Roth IRAs Y and W had not been recharacterized.

As noted above, although the return did not reflect her correct 1998 federal adjusted gross income, Taxpayer A timely filed her calendar year 1998 Federal Income Tax Return. 1998 is not a "closed" tax year.

Based on the above, you, through your authorized representative, request the following letter ruling:

> 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 ruling letter to recharacterize her Roth IRAs, Roth IRAs Y and W, as 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 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, 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.

Sections 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) 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 of the regulations 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 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, 1994-24 I.R.B. 50 (June 14, 1999) provided that a taxpayer who timely filed his/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, 1999-44 I.R.B. 555 (November 1, 1999), provided that a taxpayer who timely filed his/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.

Taxpayer A timely filed her 1998 Federal Income Tax Return. As a result, Taxpayer B was eligible for relief under either Announcement 99-57 or Announcement 99-104. However, she missed the deadlines found in said Announcements. Therefore, it is necessary to determine if she is eligible for relief under the provisions of section 301.9100-3 of the regulations.

In this case, Taxpayer A was ineligible to convert her IRAs X and Z to Roth IRAs Y and W since her adjusted gross income exceeded $100,000. However, at the time of the conversion and until she discovered otherwise as a result of her contacts with Accounting Firm N, during calendar year 2001, Taxpayer A believed that her IRAs X and Z had been properly converted to Roth IRAs, Roth IRA Y and Roth IRA W. Furthermore, Taxpayer A's ineligibility to convert her IRAs X and Z to Roth IRAs Y and W and her failure to timely recharacterize her Roth IRAs Y and W were not discovered by the Service prior to her filing this request for letter ruling.

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) and (v) of section 301.9100-3(b)(1) of the regulations.

Therefore, with respect to your ruling request, the Service concludes as follows:

That, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted a period of time, not to exceed six months from the date of this letter ruling, or, if shorter, a period of time not to exceed the remaining statute of limitations applicable to Taxpayer A's 1998 Federal Income Tax Return, to recharacterize her Roth IRAs Y and W to traditional IRAs.

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 that requested it. Section 6100(j)(3) of the Code provides that it may not be used or cited as precedent.

Please note that in conjunction with recharacterizing Taxpayer A's Roth IRAs Y and W, Taxpayer A must file an amended calendar year 1998 Federal Income Tax Return consistent with this ruling letter.

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

This letter ruling was prepared by of this Branch. He can be reached at

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose