DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON. O.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200208034

UIL No.: 9100.00-00

NOV 28 2001

T:EP:RA:T1

Legend:

Taxpayer A .....

Taxpayer B. .....

IRA W.....

IRA X.. .. .. ... .... ... ..

IRA Y.....

IRA Z.....

Company M.....

Sum N.....

Sum 0 .....

Sum P.....

Dear :

This is in response to a letter dated August 8, 2001, as supplemented by correspondence dated November 7, 2001, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). The following facts and representations were submitted in connection with your request.

Taxpayer A maintained IRA W, an individual retirement arrangement described in section 408 of the Internal Revenue Code (the "Code"), with Company M. Taxpayer A's spouse, Taxpayer B, maintained IRA X, an individual retirement arrangement described in section 408, with Company M. In 1999, Taxpayers A and B converted IRA W and IRA X to Roth IRA Y and Roth IRA Z, respectively, with Company M. The amount converted from traditional IRA W to Roth IRA Y was Sum N, and the amount converted from traditional IRA X to Roth IRA Z was

Sum 0. Taxpayers A and B jointly and timely tiled their calendar year 1999 federal income tax return. With respect to calendar year 1999, Taxpayer A's and Taxpayer B's modified adjusted gross income exceeded the limit found in section 408A(c)(3)(B).

Taxpayers A and B were unaware that they were ineligible to establish Roth IRAs until preparing their 1999 income tax return in the year 2000 when their tax advisor informed them that their modified adjusted gross income exceeded the $100,000 limit. Taxpayers A and B were also informed by their tax advisor that they could recharacterize the Roth IRA conversions or instead pay the six percent excise tax on excess contributions to their Roth IRAs in 1999. Based upon Taxpayer A's and Taxpayer B's understanding that the excise tax was a one-time penalty, Taxpayers A and B elected to pay the excise tax in the amount of Sum P on their 1999 income tax return. Not until April 2001 were Taxpayers A and B told by their tax advisor that the excise tax would apply each year until Taxpayers A and B withdrew the excess contributions to their Roth IRAs which resulted from the 1999 conversions. This request for relief under section 301.9100-3 of the regulations was submitted prior to the Service's discovering Taxpayer A's or Taxpayer B's ineligibility to convert IRA W or IRA X into a Roth IRA.

Based on your submission and the above facts and representations, you request a ruling that pursuant to section 301.9100-3 of the regulations, Taxpayers A and B are granted a period not to exceed six months from the date of this ruling letter to recharacterize Roth IRAs Y and Z back to traditional IRAs.

With respect to your ruling request, Code section 408A(d)(6) and section 1.408A-5 of the federal 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 originally 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 LRA. 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, Q&A-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 that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) 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 LT. Regulations provides 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 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 (AGI) 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 4973 of the Code imposes for each taxable year a tax in an amount equal to six percent of the amount of the excess contributions to an individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed six percent of the value of the account or annuity (determined as of the close of the taxable year).

Section 1.408A-3, Q&A-7 of the I.T. Regulations states that section 4973 imposes an annual six percent excise tax on aggregate amounts contributed to Roth IRAs that exceed the maximum contribution limits.

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) provides that the Commissioner of Internal Revenue, 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)(l) 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 Internal Revenue Service (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,

In this case, Taxpayers A and B were not eligible to convert IRA W and IRA X into Roth IRAs since their combined modified adjusted gross income for 1999 exceeded $100,000. Taxpayers A and B timely tiled their joint 1999 federal income tax return. Therefore, it is necessary to determine whether they are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Taxpayers A and B were not aware of their ineligibility to convert traditional IRAs W and X into Roth IRAs until the year 2000 when their 1999 calendar year tax return was being prepared. At this time Taxpayers A and B were informed by their tax advisor that they could recharacterize the Roth IRAs or pay the six percent excise tax on excess contributions. Taxpayers A and B elected to pay the excise tax based upon their misunderstanding that the excise tax was a one-time penalty. When Taxpayers A and B were told by their tax advisor in April 2001 that the excise tax would apply each taxable year until the excess contributions to their Roth IRAs were withdrawn, they realized their mistake in not having elected to recharacterize their Roth IRAs and requested relief from the Service before the Service discovered their ineligibility to convert IRA W and IRA X into Roth IRAs. The 1999 taxable year is not closed under the statute of limitations. Thus, Taxpayers A and B satisfy the requirements of clauses (i) and (iii) of section 301.9100-3 of the regulations. Accordingly, we rule that, pursuant to section 301.9100-3 of the regulations, Taxpayer A and Taxpayer B are granted a period not to exceed six months from the date of this ruling letter to recharacterize IRAs Y and Z back to traditional IRAs.

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

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) 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. Should you have any concerns regarding this ruling, please contact

Sincerely yours,

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

cc:

Enclosures:
Deleted copy of ruling
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