TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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T:EP:RA:T3

AUG - 7 2002

9100.00-00

LEGEND:

Taxpayer A:

Taxpayer B:

Company C:

Company D:

Attorney E:

IRA W:

IRA X:

Roth IRA Y:

Roth IRA Z:

Month 1:

Dear :

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

Taxpayer A is married to Taxpayer B. During Month 1 of calendar year 1998, Taxpayer A converted a traditional individual retirement arrangement (IRA), IRA W, maintained with Company D to a Roth IRA (Roth IRA Y) also maintained with Company D. Also during Month 1 of calendar year 1998, Taxpayer B converted a traditional IRA, IRA X, to a Roth IRA, Roth IRA Z. IRA X and Roth IRA Z were also set up and maintained with Company D. IRAs W and X represented traditional IRAs that had been transferred from Company C.

The documentation that accompanied this ruling request indicates that, although Taxpayers A and B had converted their traditional IRAs, IRAs W and X, to Roth IRAs, Roth IRAs Y and Z, during 1998, Company D did not follow all of its procedures in doing so. Thus, when Taxpayers A and B filed their 1998 Federal Income Tax Return, Form 1040, they were not sure that their conversion(s) had, in fact, occurred. Taxpayers A and B subsequently discovered that the conversions had occurred. Furthermore, documentation that accompanied this ruling request indicates that the conversions had occurred pursuant to Taxpayers A and B's requests.

With respect to calendar year 1998, Taxpayers A and B timely filed a joint Federal Income Tax Return, Form 1040. Furthermore, with respect to calendar year 1998, since the adjusted gross income of Taxpayers A and B did not exceed the limit found in section 408A(c)(3)(B) of the Internal Revenue Code, Taxpayers A and B were eligible to convert their traditional IRAs, IRAs W and X, to Roth IRAs, Roth IRAs Y and Z.

Taxpayers A and B did not reflect on their joint 1998 Federal Income Tax Return that one quarter of the amount of the traditional IRAs converted to Roth IRAs represented taxable distributions from their traditional IRAs. Thus, as of the date of this ruling request, the portion(s) of the amount(s) converted from traditional IRAs to Roth IRAs by Taxpayers A and B that should have been reflected on their 1998 joint Federal Income Tax Return, Form 1040, have not been so reflected.

Your authorized representative has asserted, on your behalf, that Taxpayers A and B are aware that certain statutes of limitations with respect to calendar year 1998 have expired. Thus, they are of the opinion, and have been so advised by counsel, that there is a degree of uncertainty as to whether the Internal Revenue Service may be able to collect federal income tax on one quarter of the amounts that had been converted from traditional IRAs to Roth IRAs even if calendar years 1999, 2000, and 2001 represent "open" tax years. However, since calendar year 1998 is a "closed" tax year, Taxpayers A and Taxpayer B have also been advised that they may be liable for federal income taxes on a portion of any distribution (or distributions) received by either from his or her Roth IRA. Thus, Taxpayers A and B are uncertain as to the federal tax ramifications of their filing the joint 1998 Federal Income Tax return in the manner in which they did. Additionally,

Taxpayers A and B wish to avoid future difficulties that may arise if they continue their IRAs as Roth IRAs. Taxpayers A and B are of the belief that their filing this request for relief under § 301.9100-3 of the regulations represents the most efficient method of resolving the above-described difficulties.

During calendar year 2002, Taxpayers A and B contacted Attorney E regarding Taxpayers A and B's failure(s) to timely recharacterize their Roth IRAs Y and Z. This request for relief under section 301.9100-3 of the regulations was filed shortly thereafter during calendar year 2002.

Based on the above facts and representations, the following letter ruling is requested:

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

With respect to the above 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) of the Code and section 1.408A-5 of the regulations, 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 of the regulations, 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)(B) provides, in short, that a taxpayer shall not be permitted to make a qualified conversion contribution from a traditional IRA to a Roth IRA if his adjusted gross income for the taxable year of conversion exceeds $100,000.

Section 1.408A-4 of the regulations, 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. Section 1.408A-4, Q&A-2, further provides, in summary, that an individual and his spouse must file a joint Federal Income 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 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 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 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 taxpayer's request for section 301.9100-3 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(b)(3)(iii) of the regulations provides that a taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in

requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the Internal Revenue Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c)(1)(i) of the regulations provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability then if the election had been timely made.

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 converted their traditional IRAs, IRA W and IRA X, to Roth IRA Y and Roth IRA Z during 1998. Taxpayers A and B were eligible to convert said traditional IRAs to Roth IRAs.

Taxpayers A and B timely filed their joint 1998 Federal Tax Return. Taxpayers A and B had until December 31, 1999 to timely "recharacterize" their Roth IRAs Y and Z as traditional IRAs.

Taxpayers A and B filed this request for section 301.9100-3 relief shortly after contacting Attorney E. Furthermore, documentation submitted on behalf of Taxpayers A and B indicates that they were unsure as to whether they had, in fact, converted their traditional IRAs to Roth IRAs, and that such uncertainty was not unreasonable.

The facts of this case indicate that, although Taxpayers A and B did convert their traditional IRAs, IRA W and IRA X, to Roth IRAs Y and Z, they were unaware of having done so at the time they filed their 1998 Federal Income Tax Return. Furthermore, as a result of their uncertainty as to whether they had converted their traditional IRAs to Roth IRAs, they have never filed a Federal Income Tax Return, Form 1040, consistent with said conversions. Thus, if the Service granted section 301.9100-3 relief in this case, Taxpayers A and B would not need to file an amended Federal Income Tax Return for

1998 since the return which they have already filed reflects the federal tax consequences of timely recharacterization.

Thus, 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 not making the election to recharacterize your Roth IRAs as traditional IRAs. Therefore, you are granted an extension of sixty (60) days from the date of the issuance of this letter ruling to so recharacterize.

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

This letter ruling assumes that all of the IRAs referenced herein will meet the requirements of either Code section 408 or Code section 408A (to the extent applicable) at all times relevant thereto.

This ruling letter was prepared by of this Group. He may be contacted at

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

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