200345044

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 14 2003

T:EP:RA:T3

Uniform Issue List: 408.00-00

ATTN:

Legend:
Taxpayer A =

IRA Y =

Roth IRA Z =

Company Q =

Ruling W =

Dear:

This is in response to a ruling request dated December 9, 2002, (supplemented by correspondence on June 16, 2003 and July 10, 2003) in which you request relief under Reg. §301.9100-3. The following facts and representations support your ruling request.

In preparing Taxpayer A's individual federal income tax return for 1998, Taxpayer A's Certified Public Accountant ("CPA") believed, in good faith on the information then available, that Taxpayer A was entitled to a $**** deduction for alimony recapture under Internal Revenue Code ("IRC") §71(f). Based on this belief, Taxpayer A elected in 1998 to convert IRA Y to Roth IRA Z and to report the $*** conversion balance as income that year instead of reporting 25% each year from 1998 to 2001.

The CPA's good faith belief was based on Ruling W. This document orders the petitioner to pay spousal support pursuant to a temporary order. These amounts do not represent alimony payments pursuant to a divorce or separate maintenance decree or written separation agreement and, accordingly, the three-year recapture rules contained in IRC §71(f) are inapplicable.

Taxpayer A filed her calendar year 1998 Federal Tax Return (Form 1040) timely. Subsequent to filing this return, upon examination by the Internal Revenue Service ("IRS"), it was discovered that the taxpayer did not qualify for the $**** alimony recapture deduction. It is represented that, Taxpayer A would have not made the

election to convert IRA Y to Roth IRA Z or to report all of the income related to the conversion in only one year if it was known at the time that the deduction would be disallowed.

The file indicates that the IRS Appeals Officer handling this case agreed with Taxpayer A's argument that the election to convert IRA Y to Roth IRA Z would not have been made if it had been known that the deduction for alimony recapture would not be allowed.

The trustee of Roth IRA Z, Company Q, refused to allow the recharacterization of Roth IRA Z back to a traditional IRA without express permission from the IRS in the form of a letter ruling.

As of the date of this ruling request, Taxpayers A has not recharacterized Roth IRA Z as a traditional IRA.

Based on the above, you request the following letter ruling:

> That Taxpayer A is granted a period not to exceed sixty days from the date of this ruling to recharacterize her Roth IRA Z as a traditional IRA.

With respect to your request for relief under Treasury Regulations ("Reg.") §301.9100-3, IRC §408A(d)(6) and Reg. §1.408A-5 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 IRC §408A(d)(6) and Reg. §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 contribution.

Reg. §1.408A-5, Question and Answer ("Q&A")-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.

Reg. §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.

Reg. §§301.9100-1, 301.9100-2, and 301.9100-3, in general, provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997.

Reg. §301.9100-1(c) provides that the Commissioner of the IRS, 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.

Reg. §301.9100-2 lists certain elections for which automatic extensions of time to file are granted. Reg. §301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in Reg. §301.9100-2. The relief requested in this case is not referenced in Reg. §301.9100-2.

Reg. §301.9100-3(a) provides that applications for relief that fall within Reg. §301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in Reg. §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.

Reg. §301.9100-3(b)(1) provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for Reg. §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 taxpayers 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.

Reg. §301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts. Reg. §301.9100-3(b)(3)(iii) states that the taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief.

Reg. §301.9100-3(c)(1)(ii) 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 letter ruling granting relief under this section.

In this case, Taxpayer A converted IRA Y to Roth IRA Z with the understanding that the conversion would not create a tax liability. Upon IRS examination, it was subsequently found that Ruling W was not considered a divorce or separation instrument under IRC §71(b)(2). Thus, Taxpayer A was not entitled to a deduction for alimony recapture and thereby created a tax liability for herself through her IRA conversion. As a result, it is

necessary to determine whether, under this set of facts, Taxpayer A is eligible for relief under the provisions of Reg. §301.9100-3.

With respect to your request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of Reg. §§301.9100-1 and 301.9100-3 have been met, and that you have acted reasonably and in good faith with respect to making the election to recharacterize your Roth IRA as a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clauses (ii) and (v) of Reg. §301.9100-3(b)(1). Therefore, you are granted an extension of sixty 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 that may be applicable thereto.

This letter is directed only to the taxpayer who requested it. IRC §6110(k)(3) 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 IRC §408 or IRC §408A (to the extent applicable) at all times relevant thereto.

Note: In order to effectuate any recharacterization(s), Taxpayer A must file amended Federal Forms 1040 for all affected years consistent with this letter ruling if she has not already done so.

Should you have any concerns with this letter, please contact ****, SE:T:EP:RA:T3, Badge ID **** at ****.

Sincerely,

Frances V. Sloan

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

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437