

Internal Revenue Service

Department of the Treasury

200130058

Washington, DC 20224

U/L: 408.00-00

contact Person:

Telephone Number:

In Reference to:

Date:

T:EP:RA:T3

MAY 4 2001

Legend:

▪ Taxpayer A:

Taxpayer B:

IRA X:

IRA Y

Company M:

Month L:

Month M:

Dear

In letters dated July 10, 2000, and March 8, 2001, you requested a ruling 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 B maintained IRA X, an individual retirement arrangement described in Code section 408(a), with Company M.. During Month L 1998, Taxpayer B converted IRA X to a Roth IRA, IRA Y, also with company M. Taxpayer A is married to Taxpayer B. Taxpayers A and B's adjusted gross income for 1998 exceeded the limit found at section 408A(c) (3) (B) of the Internal Revenue Code. However, until Month M, 2000, Taxpayer B was not aware that her adjusted gross income for calendar year 1998 precluded her converting IRA X to Roth IRA Y.

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Furthermore, Taxpayer B became aware of the time limits found in Announcements 99-57 and 99-104 only after discovering that her 1998 adjusted gross income exceeded permissible limits.

Taxpayers A and B timely filed a calendar year 1998 joint Federal Income Tax Return

Based on the above you request the following letter ruling:

That, pursuant to section 30 **1.9100-3** of the regulations, Taxpayer B is granted a **period** not to exceed six months from the date of this ruling letter to **recharacterize** her Roth IRA, IRA Y, to a traditional IRA.

With respect to your request for relief under section 30 1.9100-3 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,

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. **Section 1.408A-4, Q&A-2, further** provides, in summary, 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** 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 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.

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Section 301.9100-2 **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 the 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 temporary 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 temporary 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 or 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 B timely filed her 1998 Federal Income Tax **Return**. As a result, she 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 B was ineligible to **convert** her IRA X to Roth **IRA** Y since her and Taxpayer A's adjusted gross income exceeded \$100,000 for calendar year 1998. However, Taxpayer B believed that she was eligible to convert her IRA X to a Roth IRA until she discovered otherwise at which time the deadline in Announcement 99-104 had **passed**.

**Taxpayers A and B filed this request for section 301.9100 relief shortly after discovering that Taxpayer B was ineligible to convert IRA X to a Roth IRA. Calendar year 1998 is not a "closed" tax year.**

With **respect** to your request for relief, we believe **that**, based on the information submitted **and the representations contained herein, the requirements of section 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 IRA as a traditional **IRAs**. Specifically, the Service has concluded that you have met the **requirements** of clause (iii) of section **301.9100-3(b)(1)** of the regulations. Therefore, you are **granted** an extension of six **months 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 or either the Code or regulations **which** may be applicable thereto.

**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.**

Sincerely yours,



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