

200132038

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

U/L: 408.00-00

contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T3

Date:

MAY 15 2001

Legend:

*Taxpayer A:

Taxpayer B:

Accountant C:

IRA X:

4
Y
2

IRA Y.

Company M:

Month L:

Dear :

In letters dated August 21, 2000, and February 27, 2001, your authorized representative requested a ruling on your behalf 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, prior to the IRA "conversion", Taxpayers A and B were not advised by their tax preparer, Accountant C, that Taxpayer B was ineligible to convert IRA X to

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Roth IRA Y. Additionally, Taxpayers A and B were unaware of the time limits found in **Announcements** 99-57 and 99-104 for recharacterizing an amount that had been converted **from** a traditional IRA to a Roth IRA.

Taxpayers A and B timely filed an amended calendar year 1998 joint Federal Income Tax Return.

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

That, pursuant to section 301.9100-3 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 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,

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.

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 adjusted gross income exceeded \$100,000. 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 deadlines in Announcement 99-104 had passed. Taxpayers A and B filed this request for section 301.9100-1 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.

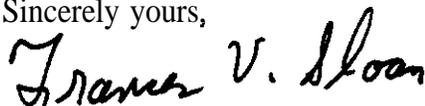
With respect to your request for relief, we believe **that**, based on the information submitted and the representations contained herein, the requirements of section 301.9100-1 and 301.9100-3 of the regulations have been met, and that you have acted reasonably and in good faith with respect to making the election to **recharacterize** your Roth IRA as a traditional **IRAs**. Specifically, the Service has concluded that you have met the requirements of clauses (i), (iii) and (v) 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.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,



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