200335036

Date: June 4, 2003

T:EP:RA:T1

Uniform Issue List: 408.00-00

Legend:
Taxpayer A =

Taxpayer B =

Company Q =

IRA X =

Roth IRA Y =

Dear ***:

This is in response to a ruling request dated March 15, 2002, 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 A maintained IRA X, a traditional individual retirement arrangement described in section 408(a) of the Internal Revenue Code ("Code"), with Company Q. IRA X was established in August of 1998 following Taxpayer A's separation of service with a former employer. IRA X was funded by a trustee-to-trustee transfer with the proceeds from Taxpayer A's former employer's section 401(k) plan.

In December 1998, following the advice of a Company Q financial advisor, Taxpayer A converted IRA X to Company Q Roth IRA Y. Taxpayer A represents that he either misunderstood or was misadvised by Company Q such that he would be eligible to convert traditional IRA X to Roth IRA Y so long as Taxpayer A's adjusted gross income did not exceed $150,000. In 1998, Taxpayer A's adjusted gross income exceeded the limit allowable under section 408A(c)(3)(B) of the Code; thus, Taxpayer A was not eligible to convert IRA X to Roth IRA Y. Taxpayer A maintains that he was unaware of this limit at the time of the conversion.

In June 2001, Taxpayer A and Taxpayer B provided their 1998 tax records to their accountant for the purpose of preparing their 1998 Federal Income Tax Return. The accountant informed Taxpayer A and Taxpayer B that the 1998 Roth conversion failed because Taxpayer A and Taxpayer B's adjusted gross income exceeded the section 408A(c)(3)(B) limit. The accountant advised Taxpayer A to submit a request to Company Q for recharacterization of his Roth IRA Y. Taxpayer A represents that he contacted Company Q in order to recharacterize his Roth IRA Y; however, Company Q did not permit the recharacterization without permission from the Internal Revenue Service ("Service") in the form of a Private letter Ruling.

Following the advice of their accountant, in March 2002, Taxpayer A and Taxpayer B filed their 1998, 1999, and 2000 joint Federal Income Tax Returns prior to seeking relief from the Service. In Taxpayer A and Taxpayer B's 1998 Return, their accountant did not include any amount of the 1998 Roth IRA conversion as taxable income, and included Form 8606, Nondeductible IRAs, which erroneously indicated that the Taxpayer A had recharacterized Roth IRA Y back to a traditional IRA. Taxpayer A and Taxpayer B did not pay tax on the 1998 Roth conversion nor has Taxpayer A recharacterized Roth IRA Y. As of the date of this ruling request, the Service has not made Taxpayer A aware of the improper IRA conversion.

Based on the above, you request the following letter ruling: that Taxpayer A is granted the authority, under section 301.9100-3 of the Procedure and Administration Regulations, to recharacterize Taxpayer A's Roth IRA Y as a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the regulations, section 408A(d)(6) of the 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 return for the year of contribution.

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.

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 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(a) 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 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 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.

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 taxpayers 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 A and Taxpayer B did not timely file their 1998 Federal Income Tax Return. As a result, the Taxpayers are not eligible for relief under either Announcement 99-57 or Announcement 99-104. Furthermore, in this case, Taxpayer A was ineligible to convert his traditional IRA X into Roth IRA Y because Taxpayer A and Taxpayer B 's combined modified adjusted gross income exceeded $100,000 for tax year 1998. Therefore, it is necessary to determine whether Taxpayer A and Taxpayer B are eligible for relief under the provisions of section 301.9100-3 of the regulations.

Although Taxpayer A and Taxpayer B were ineligible to make the 1998 Roth IRA conversion, they both were unaware of their ineligibility to do so until June 2001 when they were so informed by their accountant. Upon realizing their error, Taxpayer A and Taxpayer B requested relief from the Service before the Service discovered Taxpayer A's ineligibility to convert IRA X to Roth IRA Y.

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 Roth IRA Y back to a traditional IRA. Specifically, the Service has concluded that you have met the requirements of clause (i), (iii), and (v) of section 301.9100-3(b)(1) of the regulations. Therefore, pursuant to section 301.9100-3 of the regulations, Taxpayer A is granted an extension of sixty (60) days from the date of the issuance of this letter ruling to recharacterize Roth IRA Y back to a traditional IRA.

Please note that in conjunction with recharacterizing Taxpayer A's Roth IRA Y, Taxpayer A and Taxpayer B must file an amended calendar year 1998 Federal Income Tax Return consistent with this ruling letter if they have not already done so. In addition, this letter ruling applies solely to the amount remaining in the Roth IRA Y as of the date of the recharacterization.

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 taxpayers who requested it. Section 6110(k)(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.

Should you have any concerns with this letter, please contact ***.

Sincerely,

Donzell Littlejohn for
Andrew E. Zuckerman, Manager
Employee Plans Technical Group 1