type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

2. Section 558.355 is amended in paragraph (b)(11) by deleting ''and (xxv)'' and adding in its place ''(xxv), (xxvi), and (xxvii)'' and by adding paragraphs (f)(1)(xxvi) and (f)(1)(xxvii) to read as follows:

**§ 558.355 Monensin.**

* * * * *

(f) * * *

(1) * * *

(xxvi) *Amount per ton.* Monensin 90 to 110 grams plus bacitracin 100 to 200 grams and roxarsone 22.7 to 34.0 grams.

(*a*) *Indications for use.* As an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin methylene disalicylate; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati*; for increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Use as sole source of organic arsenic. Withdraw 5 days before slaughter. Do not feed to laying hens. To control necrotic enteritis, start medication at first clinical signs of disease. The dosage range permitted provides for different levels based on the severity of infection. Use continuously for 5 to 7 days or as long as clinical signs persist, then reduce dosage to prevention level. Animals should have access to drinking water at all times. Drug overdosage or lack of water may result in leg weakness. As roxarsone and bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.

(xxvii) *Amount per ton.* Monensin 90 to 110 grams plus bacitracin 100 to 200 grams and roxarsone 22.7 to 45.4 grams.

(*a*) *Indications for use.* As an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin methylene disalicylate; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati*; for increased rate of weight gain.

(*b*) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Use as sole source of organic arsenic. Withdraw 5 days before slaughter. Do not feed to laying hens. To control necrotic enteritis, start medication at first clinical signs of disease. The dosage range permitted provides for different levels based on the severity of infection. Use continuously for 5 to 7 days or as long as clinical signs persist, then reduce dosage to prevention level. Animals should have access to drinking water at all times. Drug overdosage or lack of water may result in leg weakness. As roxarsone and bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: January 13, 1999.

**Andrew J. Beaulieu,**

*Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 99–2687 Filed 2–3–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

**[TD 8816]**

**RIN 1545–AW62**

### Roth IRAs

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to Roth IRAs under section 408A of the Internal Revenue Code (Code). Roth IRAs were created by the Taxpayer Relief Act of 1997 as a new type of IRA that individuals can use beginning in 1998. Section 408A was amended by the Internal Revenue Service Restructuring and Reform Act of 1998. On September 3, 1998, a notice of proposed rulemaking was published in the **Federal Register** (63 FR 46937) under Code section 408A. Written comments were received regarding the proposed regulations. On December 10, 1998, a public hearing was held on the proposed regulations. The final regulations affect individuals establishing Roth IRAs, beneficiaries under Roth IRAs, and trustees, custodians or issuers of Roth IRAs.

**DATES:** *Effective date:* The final regulations are effective on February 3, 1999.

*Applicability date:* The final regulations are applicable to taxable years beginning on or after January 1, 1998, the effective date for section 408A.

**FOR FURTHER INFORMATION CONTACT:** Cathy A. Vohs, (202) 622–6030 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in §§ 1.408A–2, 1.408A–4, 1.408A–5, and 1.408A–7 of the final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1616. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Estimated average annual burden per respondent/recordkeeper: 1 minute for designating an IRA as a Roth IRA and 30 minutes for recharacterizing an IRA contribution. The estimated burdens for the other reporting/recordkeeping requirements in the these final regulations are reflected in the burden of Forms 8606, 1040, 5498, and 1099R.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

On September 3, 1998, a notice of proposed rulemaking was published in the **Federal Register** (63 FR 46937) under section 408A of the Internal

Revenue Code (Code). The proposed regulations provide guidance on section 408A of the Code, which was added by section 302 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788), and established the Roth IRA as a new type of individual retirement plan, effective for taxable years beginning on or after January 1, 1998. The provisions of section 408A were amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685). In addition, Notice 98–50 (1998–44 I.R.B. 10) provides guidance on reconverting an amount that had previously been converted and recharacterized. This notice solicited public comments concerning reconversions.

Written comments were received on the proposed regulations and Notice 98–50. A public hearing was held on the proposed regulations and Notice 98–50 on December 10, 1998. After consideration of all the comments, the proposed regulations under section 408A are adopted as revised by this Treasury decision.

**Explanation of Provisions**

*Overview*

A Roth IRA generally is treated under the Code like a traditional IRA with several significant exceptions. Similar to traditional IRAs, income on undistributed amounts accumulated under Roth IRAs is exempt from Federal income tax, and contributions to Roth IRAs are subject to specific limitations. Unlike traditional IRAs, contributions to Roth IRAs cannot be deducted from gross income, but qualified distributions from Roth IRAs are excludable from gross income.

In general, comments received on the proposed regulations did not request significant changes. Thus, the final regulations retain the general structure and substance of the proposed regulations.

*General Provisions and Establishment of Roth IRAs*

Commentators asked for clarification regarding whether a Roth IRA may be established for the benefit of a minor child or anyone else who lacks the legal capacity to act on his or her own behalf. On this point, the IRS and Treasury intend that the rules for traditional IRAs also apply to Roth IRAs. Thus, for example, a parent or guardian of a minor child may establish a Roth IRA on behalf of the minor child. However, in the case of any contribution to a Roth IRA established for a minor child, the compensation of the child for the taxable year for which the contribution is made must satisfy the compensation requirements of section 408A(c) and § 1.408A–3.

*Regular Contributions*

Several commentators requested clarification of the treatment of excess Roth IRA contributions under sections 4973, 408(d)(5), and 219(f)(6). Commentators asked for clarification regarding the removal of excess Roth IRA contributions after the contributor's Federal tax return due date has passed. The final regulations clarify that, pursuant to section 4973(f), excess contributions may be applied, on a year-by-year basis, against the annual limit for regular contributions to the extent that the Roth IRA owner is eligible to make regular Roth IRA contributions for a taxable year but does not otherwise do so. However, in response to several requests for clarification, the IRS and Treasury note that the rules under section 408(d)(5) for the tax-free distribution of certain excess traditional IRA contributions after the IRA owner's Federal income tax return due date do not apply to Roth IRAs because Roth IRA contributions are always tax-free on distribution (except to the extent that they accelerate income inclusion under the 4-year spread). Similarly, section 219(f)(6), which provides for the deductibility of excess traditional IRA contributions in subsequent taxable years, has no application to Roth IRAs because contributions to Roth IRAs are never deductible.

Another commentator asked for clarification whether contributions to education IRAs are disregarded for purposes of applying the limitation on regular contributions to Roth IRAs. No change has been made to the final regulations on this point because the final regulations retain the definition of an IRA provided in the proposed regulations, which excludes an education IRA under section 530. Thus, contributions to an education IRA are disregarded in applying the Roth IRA contribution limitation (and in applying the contribution limitation for traditional IRAs).

*Conversions*

In response to certain comments, the final regulations clarify that conversions and recharacterizations made with the same trustee may be accomplished by redesignating the account or annuity contract, rather than by the opening of a new account or the issuance of a new annuity contract for each conversion or recharacterization.

As requested by commentators, the final regulations provide that a change in filing status or a divorce does not affect the application of the 4-year spread for 1998 conversions. Thus, if a married Roth IRA owner who is using the 4-year spread files separately or divorces before the full taxable conversion amount has been included in gross income, the remainder must be included in the Roth IRA owner's gross income over the remaining years in the 4-year period, or, if applicable, in the year for which the remainder is accelerated due to distribution or death.

Two commentators questioned why the proposed regulations require that a surviving spouse be the sole beneficiary of all a Roth IRA owner's Roth IRAs in order to elect to continue application of the 4-year spread after the Roth IRA owner's death. The IRS and Treasury view this result as compelled by the statutory language of section 408A(d)(3)(E)(ii)(II). That section provides that the surviving spouse must acquire the ''entire interest'' in any Roth IRA to which a conversion contribution to which the 4-year spread applies is ''properly allocable.'' Under the aggregation and ordering rules of section 408A(d)(4), all a Roth IRA owner's Roth IRAs are treated as a single Roth IRA, and a conversion contribution is therefore allocable to all the owner's Roth IRAs. Thus, a surviving spouse must be the sole beneficiary of all a Roth IRA owner's Roth IRAs in order to acquire the entire interest in any Roth IRA to which a 1998 conversion contribution is properly allocable.

Commentators also asked the IRS and Treasury to clarify whether Roth IRA distributions that are part of a series of substantially equal periodic payments begun under a traditional IRA prior to conversion to a Roth IRA are subject to income acceleration during the 4-year spread period and the 10-percent additional tax on early distributions under section 72(t). The final regulations clarify that those distributions are subject to income acceleration to the extent allocable to a 1998 conversion contribution with respect to which the 4-year spread applies. The final regulations further clarify, however, that the additional 10-percent tax under section 72(t) will not apply, even if the distributions are not qualified distributions (as long as they are part of a series of substantially equal periodic payments).

Under the proposed regulations, if an IRA owner has reached age 70½, any amount distributed (or treated as distributed because of a conversion) from the IRA for a year consists of the required minimum distribution to the extent that an amount equal to the required minimum distribution for that year has not yet been distributed (or

treated as distributed); as a required minimum distribution, that amount cannot be converted to a Roth IRA. Although one commentator requested that this rule be retained in the final regulations, other commentators objected to it. A number of commentators asked the IRS and Treasury to adopt a rule allowing an IRA owner who wishes to convert a traditional IRA to a Roth IRA in the year he or she turns 70½ to leave the amount of his or her required minimum distribution with respect to such IRA in the IRA until April 1 of the following year, provided the conversion is accomplished by means of a trustee-to-trustee transfer. The commentators note that this rule applies in the case of trustee-to-trustee transfers between traditional IRAs. The final regulations retain the rule that the required minimum distribution amount is ineligible for rollover, including such a distribution for the year that the individual reaches age 70½, because, pursuant to section 408A(d)(3)(C), a conversion is treated as a distribution regardless of whether the conversion is accomplished by a trustee-to-trustee transfer. Accordingly, the required minimum distribution amount is ineligible for rollover, and as such, is also ineligible to be converted to a Roth IRA.

Additionally, several commentators suggested that the rule in the proposed regulations is inconsistent with section 401(a)(9), which generally requires that IRA distributions begin by April 1 of the calendar year following the calendar year in which the IRA owner reaches age 70½. These commentators argued that, under section 401(a)(9), distributions made during the calendar year in which the IRA owner reaches age 70½ should not be considered required minimum distributions under sections 401(a)(9) and 408(a)(6) and (b)(3). However, the proposed regulations under sections 401(a)(9) and 408(a)(6) and (b)(3) provide that the first year for which distributions are required under section 401(a)(9) is the year in which the IRA owner reaches age 70½, and that distributions made prior to April 1 of the following calendar year are treated as made for that first year. The regulations under section 402(c) and the proposed regulations under sections 401(a)(9) and 408(a)(6) and (b)(3) provide that the first amount distributed during a calendar year is treated as a required minimum distribution to the extent that the amount required to be distributed for that calendar year under section 401(a)(9) has not been distributed. For these reasons, the final regulations retain the rule of the proposed regulations.

*Recharacterizations of IRA Contributions*

The final regulations clarify that the computation of net income under § 1.408–4(c)(2)(iii) in the case of a commingled IRA may include net losses on the amount to be recharacterized.

Commentators asked the IRS and Treasury to clarify whether an amount converted from a SEP IRA or SIMPLE IRA to a Roth IRA may be recharacterized back to the SEP IRA or SIMPLE IRA from which the amount was converted. The final regulations provide that Roth IRA conversion contributions from a SEP IRA or SIMPLE IRA may be recharacterized to a SEP IRA or SIMPLE IRA (including the original SEP IRA or SIMPLE IRA). Another commentator also asked for clarification whether it is necessary to track the source of assets (i.e., as employer or employee contributions) converted from a SEP IRA or SIMPLE IRA to a Roth IRA for purposes of determining whether such assets may be recharacterized. The prohibition on recharacterizing employer contributions to a SEP IRA or SIMPLE IRA set forth in the final regulations only applies to those contributions at the time they are made to the SEP IRA or SIMPLE IRA. Once such contributions have been made to a SEP IRA or a SIMPLE IRA, the SEP IRA or SIMPLE IRA may be converted to a Roth IRA and subsequently recharacterized (provided, in the case of a SIMPLE IRA, that the two-year rule has been satisfied prior to the conversion).

Commentators asked for clarification regarding whether an election to recharacterize an IRA contribution may be made on behalf of a deceased IRA owner. The final regulations provide that the election to recharacterize an IRA contribution may be made by the executor, administrator, or other person charged with the duty of filing the decedent's final Federal income tax return.

Commentators also asked whether an excess contribution to an IRA made in a prior year, and applied against the contribution limits in the current year under section 4973, may be recharacterized. Only actual contributions may be recharacterized; thus, excess contributions actually made for a prior year and deemed to be current-year contributions for purposes of section 4973, are not contributions that are eligible to be recharacterized (unless the recharacterization would still be timely with respect to the taxable year for which the contributions were actually made). This rule applies to any excess contribution, whether made to a traditional or a Roth IRA.

Commentators asked for clarification regarding a conduit IRA that is converted to a Roth IRA and subsequently recharacterized back to a traditional IRA. The IRS and Treasury note that a conduit IRA that is converted to a Roth IRA and subsequently recharacterized back to a traditional IRA retains its status as a conduit IRA because the effect of the recharacterization is to treat the amount recharacterized as though it had been transferred directly from the original conduit IRA into another conduit IRA.

Commentators also asked whether a recharacterization is subject to withholding. A recharacterization is not a designated distribution under section 3405 and, therefore, is not subject to withholding.

The final regulations also provide rules regarding the ''reconversion'' of an amount that has been transferred from a Roth IRA to a traditional IRA by means of a recharacterization after having been earlier converted from a traditional IRA to a Roth IRA. After publication of the proposed regulations, the IRS and Treasury issued Notice 98–50, which provides interim rules regarding Roth IRA reconversions made during 1998 and 1999. Notice 98–50 stated that the interim rules were intended to clarify and supplement the proposed regulations and permitted taxpayers to rely on those rules as if incorporated in the proposed regulations. Notice 98–50 noted that the IRS and Treasury were considering whether the final regulations should provide that a taxpayer is not eligible to reconvert an amount before the end of the taxable year in which the amount was first converted (or the due date for that taxable year), or that a taxpayer who transfers a converted amount back to a traditional IRA in a recharacterization must wait until the passage of a fixed number of days before reconverting. Although Notice 98–50 invited interested parties to submit comments on those approaches, little comment was received on that issue. The final regulations provide reconversion rules for 2000 and subsequent years that generally differ from the interim rules of Notice 98–50. However, for 1998 and 1999, the final regulations continue the interim rules of Notice 98–50.

Effective January 1, 2000, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during any taxable year and then transfers that amount back to a traditional IRA by means of a recharacterization may not

reconvert that amount from the traditional IRA to a Roth IRA before the beginning of the taxable year following the taxable year in which the amount was converted to a Roth IRA or, if later, the end of the 30-day period beginning on the day on which the IRA owner transfers the amount from the Roth IRA back to a traditional IRA by means of a recharacterization. As under Notice 98–50, any amount previously converted is adjusted for subsequent net income in determining the amount subject to the limitation on subsequent reconversions.

A reconversion made before the later of the beginning of the next taxable year or the end of the 30-day period that begins on the day of the recharacterization is treated as a ''failed conversion'' (a distribution from the traditional IRA and a regular contribution to the Roth IRA), subject to correction through a recharacterization back to a traditional IRA. For these purposes, only a failed conversion resulting from a failure to satisfy the statutory requirements for a conversion (e.g., the $100,000 modified adjusted gross income limit) is treated as a conversion in determining when an IRA owner may make a reconversion. Thus, an IRA owner whose taxable year is the calendar year and who converts an amount to a Roth IRA in 2000 and then transfers that amount back to a traditional IRA on January 18, 2001 because his or her adjusted gross income for 2000 exceeds $100,000 cannot reconvert that amount until February 17, 2001 (the first day after the end of the 30-day period beginning on the day of the recharacterization transfer) because the failed conversion made in 2000 is treated as a conversion for purposes of the reconversion rules. However, if that IRA owner inadvertently attempts to reconvert that amount before February 17, 2001, the attempted reconversion is not treated as a conversion for purposes of the reconversion rules (although it is otherwise treated as a failed conversion). Therefore, the IRA owner could transfer the amount back to a traditional IRA in a recharacterization and reconvert it at any time on or after February 17, 2001. If the IRA owner does reconvert the amount on or after February 17, 2001, he or she cannot reconvert that amount again until 2002.

As indicated above, the final regulations continue the interim rules of Notice 98–50 applicable for 1998 and 1999. Therefore, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during 1998 and then transfers that amount back to a traditional IRA by means of a recharacterization may reconvert that amount once (but no more than once) on or after November 1, 1998 and on or before December 31, 1998; the IRA owner may also reconvert that amount once (but no more than once) during 1999. Similarly, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during 1999 that has not been converted before and then transfers that amount back to a traditional IRA by means of a recharacterization may reconvert that amount once (but no more than once) on or before December 31, 1999. In contrast to the rule for years after 1999, a failed conversion is not treated as a conversion for these 1998 and 1999 interim rules.

As did Notice 98–50, the final regulations provide that a reconversion made during 1998 or 1999 for which the IRA owner was not eligible is deemed to be an ''excess reconversion'' and does not change the IRA owner's taxable conversion amount. Instead, the excess reconversion and the last preceding recharacterization are not taken into account for purposes of determining the IRA owner's taxable conversion amount, and the IRA owner's taxable conversion amount is based on the last reconversion that was not an excess reconversion. An excess reconversion is otherwise treated as a valid reconversion. The final regulations grandfather conversions and reconversions made before November 1, 1998.

**Distributions**

In response to concerns raised in the comments regarding potential double taxation, the final regulations clarify that a nonqualified distribution from a Roth IRA is taxed only to the extent that the amount of the distribution, when added to all previous distributions (whether or not they were qualified distributions) and reduced by the taxable amount of such previous distributions, exceed the owner's contributions to all his or her Roth IRAs.

Commentators also asked for clarification regarding whether a beneficiary may aggregate his or her inherited Roth IRAs with other Roth IRAs maintained by such beneficiary. The final regulations provide that a beneficiary's inherited Roth IRA may not be aggregated with any other Roth IRA maintained by such beneficiary (except for other Roth IRAs that the beneficiary inherited from the same decedent), unless the beneficiary, as the spouse of the decedent and sole beneficiary of the Roth IRA, elects to treat the Roth IRA as his or her own.

In addition, commentators also asked for clarification regarding whether the 5-taxable year period for determining whether a distribution is a qualified distribution starts over for subsequent Roth IRA contributions if the entire account balance in a Roth IRA is distributed to the Roth IRA owner before he or she makes any other Roth IRA contributions. In such a case, the 5-taxable-year period does not start over. However, if an initial Roth IRA contribution is made to a Roth IRA that subsequently is revoked within 7 days, or if an initial Roth IRA contribution is recharacterized, the initial contribution does not start the 5-year period. The final regulations provide that an excess contribution that is distributed in accordance with section 408(d)(4) does not start the 5-year period.

One commentator questioned the rule in the proposed regulations providing that a distribution allocable to a conversion contribution is treated as made first from the portion (if any) that was includible in gross income as a result of the conversion. The IRS and Treasury note that this result is plainly compelled by section 408A(d)(4)(B)(ii). Another commentator inquired about the treatment of all conversions as designated distributions under section 3405; the commentator suggested that conversions effected by means of trustee-to-trustee transfers should not be treated as designated distributions subject to withholding. However, section 408A(d)(3) treats all Roth IRA conversions as distributions regardless of how they are effected.

*Reporting Requirements*

The final regulations retain the reporting rules set forth in the proposed regulations.

**Effective Date**

The final regulations are applicable to taxable years beginning on or after January 1, 1998, the effective date for section 408A.

**Special Analyses**

It has been determined that the final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The cost of the collection of information is insignificant because the primary reporting burden is on the individual

and not the small entity. Therefore the collection of information will not have a substantial economic impact. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of the final regulations is Cathy A. Vohs, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

§ 1.408A–1 also issued under 26 U.S.C. 408A.
§ 1.408A–2 also issued under 26 U.S.C. 408A.
§ 1.408A–3 also issued under 26 U.S.C. 408A.
§ 1.408A–4 also issued under 26 U.S.C. 408A.
§ 1.408A–5 also issued under 26 U.S.C. 408A.
§ 1.408A–6 also issued under 26 U.S.C. 408A.
§ 1.408A–7 also issued under 26 U.S.C. 408A.
§ 1.408A–8 also issued under 26 U.S.C. 408A.
§ 1.408A–9 also issued under 26 U.S.C. 408A. * * *

**Par. 2.** Sections 1.408A–0 through 1.408A–9 are added to read as follows:

### § 1.408A–0 Roth IRAs; table of contents.

This table of contents lists the regulations relating to Roth IRAs under section 408A of the Internal Revenue Code as follows:



### § 1.408A–1 Roth IRAs in general.

This section sets forth the following questions and answers that discuss the background and general features of Roth IRAs:

Q–1. What is a Roth IRA?

A–1. (a) A Roth IRA is a new type of individual retirement plan that individuals can use, beginning in 1998. Roth IRAs are described in section 408A, which was added by the Taxpayer Relief Act of 1997 (TRA 97), Public Law 105–34 (111 Stat. 788).

(b) Roth IRAs are treated like traditional IRAs except where the Internal Revenue Code specifies different treatment. For example, aggregate contributions (other than by a conversion or other rollover) to all an individual's Roth IRAs are not permitted to exceed $2,000 for a taxable year. Further, income earned on funds held in a Roth IRA is generally not taxable. Similarly, the rules of section 408(e), such as the loss of exemption of the account where the owner engages in a prohibited transaction, apply to Roth IRAs in the same manner as to traditional IRAs.

Q–2. What are the significant differences between traditional IRAs and Roth IRAs?

A–2. There are several significant differences between traditional IRAs and Roth IRAs under the Internal Revenue Code. For example, eligibility to contribute to a Roth IRA is subject to special modified AGI (adjusted gross income) limits; contributions to a Roth IRA are never deductible; qualified distributions from a Roth IRA are not includible in gross income; the required minimum distribution rules under section 408(a)(6) and (b)(3) (which generally incorporate the provisions of section 401(a)(9)) do not apply to a Roth IRA during the lifetime of the owner; and contributions to a Roth IRA can be made after the owner has attained age 70½.

### § 1.408A–2 Establishing Roth IRAs.

This section sets forth the following questions and answers that provide rules applicable to establishing Roth IRAs:

Q–1. Who can establish a Roth IRA?

A–1. Except as provided in A–3 of this section, only an individual can establish a Roth IRA. In addition, in order to be eligible to contribute to a Roth IRA for a particular year, an individual must satisfy certain compensation requirements and adjusted gross income limits (see § 1.408A–3 A–3).

Q–2. How is a Roth IRA established?

A–2. A Roth IRA can be established with any bank, insurance company, or other person authorized in accordance with § 1.408–2(e) to serve as a trustee with respect to IRAs. The document establishing the Roth IRA must clearly designate the IRA as a Roth IRA, and this designation cannot be changed at a later date. Thus, an IRA that is designated as a Roth IRA cannot later be treated as a traditional IRA. However, see § 1.408A–4 A–1(b)(3) for certain rules for converting a traditional IRA to a Roth IRA with the same trustee by redesignating the traditional IRA as a Roth IRA, and see § 1.408A–5 for rules for recharacterizing certain IRA contributions.

Q–3. Can an employer or an association of employees establish a Roth IRA to hold contributions of employees or members?

A–3. Yes. Pursuant to section 408(c), an employer or an association of employees can establish a trust to hold contributions of employees or members made under a Roth IRA. Each employee's or member's account in the trust is treated as a separate Roth IRA that is subject to the generally applicable Roth IRA rules. The employer or association of employees may do certain acts otherwise required by an individual, for example, establishing and designating a trust as a Roth IRA.

Q–4. What is the effect of a surviving spouse of a Roth IRA owner treating an IRA as his or her own?

A–4. If the surviving spouse of a Roth IRA owner treats a Roth IRA as his or her own as of a date, the Roth IRA is treated from that date forward as though it were established for the benefit of the surviving spouse and not the original Roth IRA owner. Thus, for example, the surviving spouse is treated as the Roth IRA owner for purposes of applying the minimum distribution requirements under section 408(a)(6) and (b)(3). Similarly, the surviving spouse is treated as the Roth IRA owner rather than a beneficiary for purposes of determining the amount of any distribution from the Roth IRA that is includible in gross income and whether the distribution is subject to the 10-percent additional tax under section 72(t).

### § 1.408A–3 Contributions to Roth IRAs.

This section sets forth the following questions and answers that provide rules regarding contributions to Roth IRAs:

Q–1. What types of contributions are permitted to be made to a Roth IRA?

A–1. There are two types of contributions that are permitted to be

made to a Roth IRA: regular contributions and qualified rollover contributions (including conversion contributions). The term regular contributions means contributions other than qualified rollover contributions.

Q–2. When are contributions permitted to be made to a Roth IRA?

A–2. (a) The provisions of section 408A are effective for taxable years beginning on or after January 1, 1998. Thus, the first taxable year for which contributions are permitted to be made to a Roth IRA by an individual is the individual's taxable year beginning in 1998.

(b) Regular contributions for a particular taxable year must generally be contributed by the due date (not including extensions) for filing a Federal income tax return for that taxable year. (See § 1.408A–5 regarding recharacterization of certain contributions.)

Q–3. What is the maximum aggregate amount of regular contributions an individual is eligible to contribute to a Roth IRA for a taxable year?

A–3. (a) The maximum aggregate amount that an individual is eligible to contribute to all his or her Roth IRAs as a regular contribution for a taxable year is the same as the maximum for traditional IRAs: $2,000 or, if less, that individual's compensation for the year.

(b) For Roth IRAs, the maximum amount described in paragraph (a) of this A–3 is phased out between certain levels of modified AGI. For an individual who is not married, the dollar amount is phased out ratably between modified AGI of $95,000 and $110,000; for a married individual filing a joint return, between modified AGI of $150,000 and $160,000; and for a married individual filing separately, between modified AGI of $0 and $10,000. For this purpose, a married individual who has lived apart from his or her spouse for the entire taxable year and who files separately is treated as not married. Under section 408A(c)(3)(A), in applying the phase-out, the maximum amount is rounded up to the next higher multiple of $10 and is not reduced below $200 until completely phased out.

(c) If an individual makes regular contributions to both traditional IRAs and Roth IRAs for a taxable year, the maximum limit for the Roth IRA is the lesser of—

(1) The amount described in paragraph (a) of this A–3 reduced by the amount contributed to traditional IRAs for the taxable year; and

(2) The amount described in paragraph (b) of this A–3. Employer contributions, including elective deferrals, made under a SEP or SIMPLE IRA Plan on behalf of an individual (including a self-employed individual) do not reduce the amount of the individual's maximum regular contribution.

(d) The rules in this A–3 are illustrated by the following examples:

*Example 1.* In 1998, unmarried, calendar-year taxpayer B, age 60, has modified AGI of $40,000 and compensation of $5,000. For 1998, B can contribute a maximum of $2,000 to a traditional IRA, a Roth IRA or a combination of traditional and Roth IRAs.

*Example 2.* The facts are the same as in *Example 1.* However, assume that B violates the maximum regular contribution limit by contributing $2,000 to a traditional IRA and $2,000 to a Roth IRA for 1998. The $2,000 to B's Roth IRA would be an excess contribution to B's Roth IRA for 1998 because an individual's contributions are applied first to a traditional IRA, then to a Roth IRA.

*Example 3.* The facts are the same as in *Example 1,* except that B's compensation is $900. The maximum amount B can contribute to either a traditional IRA or a Roth (or a combination of the two) for 1998 is $900.

*Example 4.* In 1998, unmarried, calendar-year taxpayer C, age 60, has modified AGI of $100,000 and compensation of $5,000. For 1998, C contributes $800 to a traditional IRA and $1,200 to a Roth IRA. Because C's $1,200 Roth IRA contribution does not exceed the phased-out maximum Roth IRA contribution of $1,340 and because C's total IRA contributions do not exceed $2,000, C's Roth IRA contribution does not exceed the maximum permissible contribution.

Q–4. How is compensation defined for purposes of the Roth IRA contribution limit?

A–4. For purposes of the contribution limit described in A–3 of this section, an individual's compensation is the same as that used to determine the maximum contribution an individual can make to a traditional IRA. This amount is defined in section 219(f)(1) to include wages, commissions, professional fees, tips, and other amounts received for personal services, as well as taxable alimony and separate maintenance payments received under a decree of divorce or separate maintenance. Compensation also includes earned income as defined in section 401(c)(2), but does not include any amount received as a pension or annuity or as deferred compensation. In addition, under section 219(c), a married individual filing a joint return is permitted to make an IRA contribution by treating his or her spouse's higher compensation as his or her own, but only to the extent that the spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a traditional IRA.

Q–5. What is the significance of modified AGI and how is it determined?

A–5. Modified AGI is used for purposes of the phase-out rules described in A–3 of this section and for purposes of the $100,000 modified AGI limitation described in § 1.408A–4 A–2(a) (relating to eligibility for conversion). As defined in section 408A(c)(3)(C)(i), modified AGI is the same as adjusted gross income under section 219(g)(3)(A) (used to determine the amount of deductible contributions that can be made to a traditional IRA by an individual who is an active participant in an employer-sponsored retirement plan), except that any conversion is disregarded in determining modified AGI. For example, the deduction for contributions to an IRA is not taken into account for purposes of determining adjusted gross income under section 219 and thus does not apply in determining modified AGI for Roth IRA purposes.

Q–6. Is a required minimum distribution from an IRA for a year included in income for purposes of determining modified AGI?

A–6. (a) Yes. For taxable years beginning before January 1, 2005, any required minimum distribution from an IRA under section 408(a)(6) and (b)(3) (which generally incorporate the provisions of section 401(a)(9)) is included in income for purposes of determining modified AGI.

(b) For taxable years beginning after December 31, 2004, and solely for purposes of the $100,000 limitation applicable to conversions, modified AGI does not include any required minimum distributions from an IRA under section 408(a)(6) and (b)(3).

Q–7. Does an excise tax apply if an individual exceeds the aggregate regular contribution limits for Roth IRAs?

A–7. Yes. Section 4973 imposes an annual 6-percent excise tax on aggregate amounts contributed to Roth IRAs that exceed the maximum contribution limits described in A–3 of this section. Any contribution that is distributed, together with net income, from a Roth IRA on or before the tax return due date (plus extensions) for the taxable year of the contribution is treated as not contributed. Net income described in the previous sentence is includible in gross income for the taxable year in which the contribution is made. Aggregate excess contributions that are not distributed from a Roth IRA on or before the tax return due date (with extensions) for the taxable year of the contributions are reduced as a deemed Roth IRA contribution for each

subsequent taxable year to the extent that the Roth IRA owner does not actually make regular IRA contributions for such years. Section 4973 applies separately to an individual's Roth IRAs and other types of IRAs.

**§ 1.408A–4 Converting amounts to Roth IRAs.**

This section sets forth the following questions and answers that provide rules applicable to Roth IRA conversions:

Q–1. Can an individual convert an amount in his or her traditional IRA to a Roth IRA?

A–1. (a) Yes. An amount in a traditional IRA may be converted to an amount in a Roth IRA if two requirements are satisfied. First, the IRA owner must satisfy the modified AGI limitation described in A–2(a) of this section and, if married, the joint filing requirement described in A–2(b) of this section. Second, the amount contributed to the Roth IRA must satisfy the definition of a qualified rollover contribution in section 408A(e) (i.e., it must satisfy the requirements for a rollover contribution as defined in section 408(d)(3), except that the one-rollover-per-year limitation in section 408(d)(3)(B) does not apply).

(b) An amount can be converted by any of three methods—

(1) An amount distributed from a traditional IRA is contributed (rolled over) to a Roth IRA within the 60-day period described in section 408(d)(3)(A)(i);

(2) An amount in a traditional IRA is transferred in a trustee-to-trustee transfer from the trustee of the traditional IRA to the trustee of the Roth IRA; or

(3) An amount in a traditional IRA is transferred to a Roth IRA maintained by the same trustee. For purposes of sections 408 and 408A, redesignating a traditional IRA as a Roth IRA is treated as a transfer of the entire account balance from a traditional IRA to a Roth IRA.

(c) Any converted amount is treated as a distribution from the traditional IRA and a qualified rollover contribution to the Roth IRA for purposes of section 408 and section 408A, even if the conversion is accomplished by means of a trustee-to-trustee transfer or a transfer between IRAs of the same trustee.

(d) A transaction that is treated as a failed conversion under § 1.408A–5 A–9(a)(1) is not a conversion.

Q–2. What are the modified AGI limitation and joint filing requirements for conversions?

A–2. (a) An individual with modified AGI in excess of $100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. This $100,000 limitation applies to the taxable year that the funds are paid from the traditional IRA, rather than the year they are contributed to the Roth IRA.

(b) If the individual is married, he or she is permitted to convert an amount to a Roth IRA during a taxable year only if the individual and the individual's spouse file a joint return for the taxable year that the funds are paid from the traditional IRA. In this case, the modified AGI subject to the $100,000 limit is the modified AGI derived from the joint return using the couple's combined income. The only exception to this joint filing requirement is for an individual who has lived apart from his or her spouse for the entire taxable year. If the married individual has lived apart from his or her spouse for the entire taxable year, then such individual can treat himself or herself as not married for purposes of this paragraph, file a separate return and be subject to the $100,000 limit on his or her separate modified AGI. In all other cases, a married individual filing a separate return is not permitted to convert an amount to a Roth IRA, regardless of the individual's modified AGI.

Q–3. Is a remedy available to an individual who makes a failed conversion?

A–3. (a) Yes. See § 1.408A–5 for rules permitting a failed conversion amount to be recharacterized as a contribution to a traditional IRA. If the requirements in § 1.408A–5 are satisfied, the failed conversion amount will be treated as having been contributed to the traditional IRA and not to the Roth IRA.

(b) If the contribution is not recharacterized in accordance with § 1.408A–5, the contribution will be treated as a regular contribution to the Roth IRA and, thus, an excess contribution subject to the excise tax under section 4973 to the extent that it exceeds the individual's regular contribution limit. This is the result regardless of which of the three methods described in A–1(b) of this section applies to this transaction. Additionally, the distribution from the traditional IRA will not be eligible for the 4-year spread and will be subject to the additional tax under section 72(t) (unless an exception under that section applies).

Q–4. Do any special rules apply to a conversion of an amount in an individual's SEP IRA or SIMPLE IRA to a Roth IRA?

A–4. (a) An amount in an individual's SEP IRA can be converted to a Roth IRA on the same terms as an amount in any other traditional IRA.

(b) An amount in an individual's SIMPLE IRA can be converted to a Roth IRA on the same terms as a conversion from a traditional IRA, except that an amount distributed from a SIMPLE IRA during the 2-year period described in section 72(t)(6), which begins on the date that the individual first participated in any SIMPLE IRA Plan maintained by the individual's employer, cannot be converted to a Roth IRA. Pursuant to section 408(d)(3)(G), a distribution of an amount from an individual's SIMPLE IRA during this 2-year period is not eligible to be rolled over into an IRA that is not a SIMPLE IRA and thus cannot be a qualified rollover contribution. This 2-year period of section 408(d)(3)(G) applies separately to the contributions of each of an individual's employers maintaining a SIMPLE IRA Plan.

(c) Once an amount in a SEP IRA or SIMPLE IRA has been converted to a Roth IRA, it is treated as a contribution to a Roth IRA for all purposes. Future contributions under the SEP or under the SIMPLE IRA Plan may not be made to the Roth IRA.

Q–5. Can amounts in other kinds of retirement plans be converted to a Roth IRA?

A–5. No. Only amounts in another IRA can be converted to a Roth IRA. For example, amounts in a qualified plan or annuity plan described in section 401(a) or 403(a) cannot be converted directly to a Roth IRA. Also, amounts held in an annuity contract or account described in section 403(b) cannot be converted directly to a Roth IRA.

Q–6. Can an individual who has attained at least age 70½ by the end of a calendar year convert an amount distributed from a traditional IRA during that year to a Roth IRA before receiving his or her required minimum distribution with respect to the traditional IRA for the year of the conversion?

A–6. (a) No. In order to be eligible for a conversion, an amount first must be eligible to be rolled over. Section 408(d)(3) prohibits the rollover of a required minimum distribution. If a minimum distribution is required for a year with respect to an IRA, the first dollars distributed during that year are treated as consisting of the required minimum distribution until an amount equal to the required minimum distribution for that year has been distributed.

(b) As provided in A–1(c) of this section, any amount converted is treated as a distribution from a traditional IRA and a rollover contribution to a Roth

IRA and not as a trustee-to-trustee transfer for purposes of section 408 and section 408A. Thus, in a year for which a minimum distribution is required (including the calendar year in which the individual attains age 70½), an individual may not convert the assets of an IRA (or any portion of those assets) to a Roth IRA to the extent that the required minimum distribution for the traditional IRA for the year has not been distributed.

(c) If a required minimum distribution is contributed to a Roth IRA, it is treated as having been distributed, subject to the normal rules under section 408(d)(1) and (2), and then contributed as a regular contribution to a Roth IRA. The amount of the required minimum distribution is not a conversion contribution.

Q–7. What are the tax consequences when an amount is converted to a Roth IRA?

A–7. (a) Any amount that is converted to a Roth IRA is includible in gross income as a distribution according to the rules of section 408(d)(1) and (2) for the taxable year in which the amount is distributed or transferred from the traditional IRA. Thus, any portion of the distribution or transfer that is treated as a return of basis under section 408(d)(1) and (2) is not includible in gross income as a result of the conversion.

(b) The 10-percent additional tax under section 72(t) generally does not apply to the taxable conversion amount. But see § 1.408A–6 A–5 for circumstances under which the taxable conversion amount would be subject to the additional tax under section 72(t).

(c) Pursuant to section 408A(e), a conversion is not treated as a rollover for purposes of the one-rollover-per-year rule of section 408(d)(3)(B).

Q–8. Is there an exception to the income-inclusion rule described in A–7 of this section for 1998 conversions?

A–8. Yes. In the case of a distribution (including a trustee-to-trustee transfer) from a traditional IRA on or before December 31, 1998, that is converted to a Roth IRA, instead of having the entire taxable conversion amount includible in income in 1998, an individual includes in gross income for 1998 only one quarter of that amount and one quarter of that amount for each of the next 3 years. This 4-year spread also applies if the conversion amount was distributed in 1998 and contributed to the Roth IRA within the 60-day period described in section 408(d)(3)(A)(i), but after December 31, 1998. However, see § 1.408A–6 A–6 for special rules requiring acceleration of inclusion if an amount subject to the 4-year spread is distributed from the Roth IRA before 2001.

Q–9. Is the taxable conversion amount included in income for all purposes?

A–9. Except as provided below, any taxable conversion amount includible in gross income for a year as a result of the conversion (regardless of whether the individual is using a 4-year spread) is included in income for all purposes. Thus, for example, it is counted for purposes of determining the taxable portion of social security payments under section 86 and for purposes of determining the phase-out of the $25,000 exemption under section 469(i) relating to the disallowance of passive activity losses from rental real estate activities. However, as provided in § 1.408A–3 A–5, the taxable conversion amount (and any resulting change in other elements of adjusted gross income) is disregarded for purposes of determining modified AGI for section 408A.

Q–10. Can an individual who makes a 1998 conversion elect not to have the 4-year spread apply and instead have the full taxable conversion amount includible in gross income for 1998?

A–10. Yes. Instead of having the taxable conversion amount for a 1998 conversion included over 4 years as provided under A–8 of this section, an individual can elect to include the full taxable conversion amount in income for 1998. The election is made on Form 8606 and cannot be made or changed after the due date (including extensions) for filing the 1998 Federal income tax return.

Q–11. What happens when an individual who is using the 4-year spread dies, files separately, or divorces before the full taxable conversion amount has been included in gross income?

A–11. (a) If an individual who is using the 4-year spread described in A–8 of this section dies before the full taxable conversion amount has been included in gross income, then the remainder must be included in the individual's gross income for the taxable year that includes the date of death.

(b) However, if the sole beneficiary of all the decedent's Roth IRAs is the decedent's spouse, then the spouse can elect to continue the 4-year spread. Thus, the spouse can elect to include in gross income the same amount that the decedent would have included in each of the remaining years of the 4-year period. Where the spouse makes such an election, the amount includible under the 4-year spread for the taxable year that includes the date of the decedent's death remains includible in the decedent's gross income and is reported on the decedent's final Federal income tax return. The election is made on either Form 8606 or Form 1040, in accordance with the instructions to the applicable form, for the taxable year that includes the decedent's date of death and cannot be changed after the due date (including extensions) for filing the Federal income tax return for the spouse's taxable year that includes the decedent's date of death.

(c) If a Roth IRA owner who is using the 4-year spread and who was married in 1998 subsequently files separately or divorces before the full taxable conversion amount has been included in gross income, the remainder of the taxable conversion amount must be included in the Roth IRA owner's gross income over the remaining years in the 4-year period (unless accelerated because of distribution or death).

Q–12. Can an individual convert a traditional IRA to a Roth IRA if he or she is receiving substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) from that traditional IRA?

A–12. Yes. Not only is the conversion amount itself not subject to the early distribution tax under section 72(t), but the conversion amount is also not treated as a distribution for purposes of determining whether a modification within the meaning of section 72(t)(4)(A) has occurred. Distributions from the Roth IRA that are part of the original series of substantially equal periodic payments will be nonqualified distributions from the Roth IRA until they meet the requirements for being a qualified distribution, described in § 1.408A–6 A–1(b). The additional 10-percent tax under section 72(t) will not apply to the extent that these nonqualified distributions are part of a series of substantially equal periodic payments. Nevertheless, to the extent that such distributions are allocable to a 1998 conversion contribution with respect to which the 4-year spread for the resultant income inclusion applies (see A–8 of this section) and are received during 1998, 1999, or 2000, the special acceleration rules of § 1.408A–6 A–6 apply. However, if the original series of substantially equal periodic payments does not continue to be distributed in substantially equal periodic payments from the Roth IRA after the conversion, the series of payments will have been modified and, if this modification occurs within 5 years of the first payment or prior to the individual becoming disabled or attaining age 59½, the taxpayer will be subject to the recapture tax of section 72(t)(4)(A).

Q–13. Can a 1997 distribution from a traditional IRA be converted to a Roth IRA in 1998?

A–13. No. An amount distributed from a traditional IRA in 1997 that is contributed to a Roth IRA in 1998 would not be a conversion contribution. See A–3 of this section regarding the remedy for a failed conversion.

**§ 1.408A–5 Recharacterized contributions.**

This section sets forth the following questions and answers that provide rules regarding recharacterizing IRA contributions:

Q–1. Can an IRA owner recharacterize certain contributions (i.e., treat a contribution made to one type of IRA as made to a different type of IRA) for a taxable year?

A–1. (a) Yes. In accordance with section 408A(d)(6), except as otherwise provided in this section, if an individual makes a contribution to an IRA (the FIRST IRA) for a taxable year and then transfers the contribution (or a portion of the contribution) in a trustee-to-trustee transfer from the trustee of the FIRST IRA to the trustee of another IRA (the SECOND IRA), the individual can elect to treat the contribution as having been made to the SECOND IRA, instead of to the FIRST IRA, for Federal tax purposes. A transfer between the FIRST IRA and the SECOND IRA will not fail to be a trustee-to-trustee transfer merely because both IRAs are maintained by the same trustee. For purposes of section 408A(d)(6), redesignating the FIRST IRA as the SECOND IRA will be treated as a transfer of the entire account balance from the FIRST IRA to the SECOND IRA.

(b) This recharacterization election can be made only if the trustee-to-trustee transfer from the FIRST IRA to the SECOND IRA is made on or before the due date (including extensions) for filing the individual's Federal income tax return for the taxable year for which the contribution was made to the FIRST IRA. For purposes of this section, a conversion that is accomplished through a rollover of a distribution from a traditional IRA in a taxable year that, 60 days after the distribution (as described in section 408(d)(3)(A)(i)), is contributed to a Roth IRA in the next taxable year is treated as a contribution for the earlier taxable year.

Q–2. What is the proper treatment of the net income attributable to the amount of a contribution that is being recharacterized?

A–2. (a) The net income attributable to the amount of a contribution that is being recharacterized must be transferred to the SECOND IRA along with the contribution.

(b) If the amount of the contribution being recharacterized was contributed to a separate IRA and no distributions or additional contributions have been made from or to that IRA at any time, then the contribution is recharacterized by the trustee of the FIRST IRA transferring the entire account balance of the FIRST IRA to the trustee of the SECOND IRA. In this case, the net income (or loss) attributable to the contribution being recharacterized is the difference between the amount of the original contribution and the amount transferred.

(c) If paragraph (b) of this A–2 does not apply, then the net income attributable to the amount of a contribution is calculated in the manner prescribed by § 1.408–4(c)(2)(ii) (disregarding the parenthetical clause in § 1.408–4(c)(2)(iii)).

Q–3. What is the effect of recharacterizing a contribution made to the FIRST IRA as a contribution made to the SECOND IRA?

A–3. The contribution that is being recharacterized as a contribution to the SECOND IRA is treated as having been originally contributed to the SECOND IRA on the same date and (in the case of a regular contribution) for the same taxable year that the contribution was made to the FIRST IRA. Thus, for example, no deduction would be allowed for a contribution to the FIRST IRA, and any net income transferred with the recharacterized contribution is treated as earned in the SECOND IRA, and not the FIRST IRA.

Q–4. Can an amount contributed to an IRA in a tax-free transfer be recharacterized under A–1 of this section?

A–4. No. If an amount is contributed to the FIRST IRA in a tax-free transfer, the amount cannot be recharacterized as a contribution to the SECOND IRA under A–1 of this section. However, if an amount is erroneously rolled over or transferred from a traditional IRA to a SIMPLE IRA, the contribution can subsequently be recharacterized as a contribution to another traditional IRA.

Q–5. Can an amount contributed by an employer under a SIMPLE IRA Plan or a SEP be recharacterized under A–1 of this section?

A–5. No. Employer contributions (including elective deferrals) under a SIMPLE IRA Plan or a SEP cannot be recharacterized as contributions to another IRA under A–1 of this section. However, an amount converted from a SEP IRA or SIMPLE IRA to a Roth IRA may be recharacterized under A–1 of this section as a contribution to a SEP IRA or SIMPLE IRA, including the original SEP IRA or SIMPLE IRA.

Q–6. How does a taxpayer make the election to recharacterize a contribution to an IRA for a taxable year?

A–6. (a) An individual makes the election described in this section by notifying, on or before the date of the transfer, both the trustee of the FIRST IRA and the trustee of the SECOND IRA, that the individual has elected to treat the contribution as having been made to the SECOND IRA, instead of the FIRST IRA, for Federal tax purposes. The notification of the election must include the following information: the type and amount of the contribution to the FIRST IRA that is to be recharacterized; the date on which the contribution was made to the FIRST IRA and the year for which it was made; a direction to the trustee of the FIRST IRA to transfer, in a trustee-to-trustee transfer, the amount of the contribution and net income allocable to the contribution to the trustee of the SECOND IRA; and the name of the trustee of the FIRST IRA and the trustee of the SECOND IRA and any additional information needed to make the transfer.

(b) The election and the trustee-to-trustee transfer must occur on or before the due date (including extensions) for filing the individual's Federal income tax return for the taxable year for which the recharacterized contribution was made to the FIRST IRA, and the election cannot be revoked after the transfer. An individual who makes this election must report the recharacterization, and must treat the contribution as having been made to the SECOND IRA, instead of the FIRST IRA, on the individual's Federal income tax return for the taxable year described in the preceding sentence in accordance with the applicable Federal tax forms and instructions.

(c) The election to recharacterize a contribution described in this A–6 may be made on behalf of a deceased IRA owner by his or her executor, administrator, or other person responsible for filing the final Federal income tax return of the decedent under section 6012(b)(1).

Q–7. If an amount is initially contributed to an IRA for a taxable year, then is moved (with net income attributable to the contribution) in a tax-free transfer to another IRA (the FIRST IRA for purposes of A–1 of this section), can the tax-free transfer be disregarded, so that the initial contribution that is transferred from the FIRST IRA to the SECOND IRA is treated as a recharacterization of that initial contribution?

A–7. Yes. In applying section 408A(d)(6), tax-free transfers between IRAs are disregarded. Thus, if a

contribution to an IRA for a year is followed by one or more tax-free transfers between IRAs prior to the recharacterization, then for purposes of section 408A(d)(6), the contribution is treated as if it remained in the initial IRA. Consequently, an individual may elect to recharacterize an initial contribution made to the initial IRA that was involved in a series of tax-free transfers by making a trustee-to-trustee transfer from the last IRA in the series to the SECOND IRA. In this case the contribution to the SECOND IRA is treated as made on the same date (and for the same taxable year) as the date the contribution being recharacterized was made to the initial IRA.

Q–8. If a contribution is recharacterized, is the recharacterization treated as a rollover for purposes of the one-rollover-per-year limitation of section 408(d)(3)(B)?

A–8. No, recharacterizing a contribution under A–1 of this section is never treated as a rollover for purposes of the one-rollover-per-year limitation of section 408(d)(3)(B), even if the contribution would have been treated as a rollover contribution by the SECOND IRA if it had been made directly to the SECOND IRA, rather than as a result of a recharacterization of a contribution to the FIRST IRA.

Q–9. If an IRA owner converts an amount from a traditional IRA to a Roth IRA and then transfers that amount back to a traditional IRA in a recharacterization, may the IRA owner subsequently reconvert that amount from the traditional IRA to a Roth IRA?

A–9. (a)(1) Except as otherwise provided in paragraph (b) of this A–9, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during any taxable year and then transfers that amount back to a traditional IRA by means of a recharacterization may not reconvert that amount from the traditional IRA to a Roth IRA before the beginning of the taxable year following the taxable year in which the amount was converted to a Roth IRA or, if later, the end of the 30-day period beginning on the day on which the IRA owner transfers the amount from the Roth IRA back to a traditional IRA by means of a recharacterization (regardless of whether the recharacterization occurs during the taxable year in which the amount was converted to a Roth IRA or the following taxable year). Thus, any attempted reconversion of an amount prior to the time permitted under this paragraph (a)(1) is a failed conversion of that amount. However, see § 1.408A–4 A–3 for a remedy available to an individual who makes a failed conversion.

(2) For purposes of paragraph (a)(1) of this A–9, a failed conversion of an amount resulting from a failure to satisfy the requirements of § 1.408A–4 A–1(a) is treated as a conversion in determining whether an IRA owner has previously converted that amount.

(b)(1) An IRA owner who converts an amount from a traditional IRA to a Roth IRA during taxable year 1998 and then transfers that amount back to a traditional IRA by means of a recharacterization may reconvert that amount once (but no more than once) on or after November 1, 1998 and on or before December 31, 1998; the IRA owner may also reconvert that amount once (but no more than once) during 1999. The rule set forth in the preceding sentence applies without regard to whether the IRA owner's initial conversion or recharacterization of the amount occurred before, on, or after November 1, 1998. An IRA owner who converts an amount from a traditional IRA to a Roth IRA during taxable year 1999 that has not been converted previously and then transfers that amount back to a traditional IRA by means of a recharacterization may reconvert that amount once (but no more than once) on or before December 31, 1999. For purposes of this paragraph (b)(1), a failed conversion of an amount resulting from a failure to satisfy the requirements of § 1.408A–4 A–1(a) is not treated as a conversion in determining whether an IRA owner has previously converted that amount.

(2) A reconversion by an IRA owner during 1998 or 1999 for which the IRA owner is not eligible under paragraph (b)(1) of this A–9 will be deemed an excess reconversion (rather than a failed conversion) and will not change the IRA owner's taxable conversion amount. Instead, the excess reconversion and the last preceding recharacterization will not be taken into account for purposes of determining the IRA owner's taxable conversion amount, and the IRA owner's taxable conversion amount will be based on the last reconversion that was not an excess reconversion (unless, after the excess reconversion, the amount is transferred back to a traditional IRA by means of a recharacterization). An excess reconversion will otherwise be treated as a valid reconversion.

(3) For purposes of this paragraph (b), any reconversion that an IRA owner made before November 1, 1998 will not be treated as an excess reconversion and will not be taken into account in determining whether any later reconversion is an excess reconversion.

(c) In determining the portion of any amount held in a Roth IRA or a traditional IRA that an IRA owner may not reconvert under this A–9, any amount previously converted (or reconverted) is adjusted for subsequent net income thereon.

Q–10. Are there examples to illustrate the rules in this section?

A–10. The rules in this section are illustrated by the following examples:

*Example 1.* In 1998, Individual C converts the entire amount in his traditional IRA to a Roth IRA. Individual C thereafter determines that his modified AGI for 1998 exceeded $100,000 so that he was ineligible to have made a conversion in that year. Accordingly, prior to the due date (plus extensions) for filing the individual's Federal income tax return for 1998, he decides to recharacterize the conversion contribution. He instructs the trustee of the Roth IRA (FIRST IRA) to transfer in a trustee-to-trustee transfer the amount of the contribution, plus net income, to the trustee of a new traditional IRA (SECOND IRA). The individual notifies the trustee of the FIRST IRA and the trustee of the SECOND IRA that he is recharacterizing his IRA contribution (and provides the other information described in A–6 of this section). On the individual's Federal income tax return for 1998, he treats the original amount of the conversion as having been contributed to the SECOND IRA and not the Roth IRA. As a result, for Federal tax purposes, the contribution is treated as having been made to the SECOND IRA and not to the Roth IRA. The result would be the same if the conversion amount had been transferred in a tax-free transfer to another Roth IRA prior to the recharacterization.

*Example 2.* In 1998, an individual makes a $2,000 regular contribution for 1998 to his traditional IRA (FIRST IRA). Prior to the due date (plus extensions) for filing the individual's Federal income tax return for 1998, he decides that he would prefer to contribute to a Roth IRA instead. The individual instructs the trustee of the FIRST IRA to transfer in a trustee-to-trustee transfer the amount of the contribution, plus attributable net income, to the trustee of a Roth IRA (SECOND IRA). The individual notifies the trustee of the FIRST IRA and the trustee of the SECOND IRA that he is recharacterizing his $2,000 contribution for 1998 (and provides the other information described in A–6 of this section). On the individual's Federal income tax return for 1998, he treats the $2,000 as having been contributed to the Roth IRA for 1998 and not to the traditional IRA. As a result, for Federal tax purposes, the contribution is treated as having been made to the Roth IRA for 1998 and not to the traditional IRA. The result would be the same if the conversion amount had been transferred in a tax-free transfer to another traditional IRA prior to the recharacterization.

*Example 3.* The facts are the same as in *Example 2*, except that the $2,000 regular contribution is initially made to a Roth IRA and the recharacterizing transfer is made to a traditional IRA. On the individual's Federal income tax return for 1998, he treats the

$2,000 as having been contributed to the traditional IRA for 1998 and not the Roth IRA. As a result, for Federal tax purposes, the contribution is treated as having been made to the traditional IRA for 1998 and not the Roth IRA. The result would be the same if the contribution had been transferred in a tax-free transfer to another Roth IRA prior to the recharacterization, except that the only Roth IRA trustee the individual must notify is the one actually making the recharacterization transfer.

*Example 4.* In 1998, an individual receives a distribution from traditional IRA 1 and contributes the entire amount to traditional IRA 2 in a rollover contribution described in section 408(d)(3). In this case, the individual cannot elect to recharacterize the contribution by transferring the contribution amount, plus net income, to a Roth IRA, because an amount contributed to an IRA in a tax-free transfer cannot be recharacterized. However, the individual may convert (other than by recharacterization) the amount in traditional IRA 2 to a Roth IRA at any time, provided the requirements of § 1.408A–4 A–1 are satisfied.

**§ 1.408A–6 Distributions.**

This section sets forth the following questions and answers that provide rules regarding distributions from Roth IRAs:

Q–1. How are distributions from Roth IRAs taxed?

A–1. (a) The taxability of a distribution from a Roth IRA generally depends on whether or not the distribution is a qualified distribution. This A–1 provides rules for qualified distributions and certain other nontaxable distributions. A–4 of this section provides rules for the taxability of distributions that are not qualified distributions.

(b) A distribution from a Roth IRA is not includible in the owner's gross income if it is a qualified distribution or to the extent that it is a return of the owner's contributions to the Roth IRA (determined in accordance with A–8 of this section). A qualified distribution is one that is both—

(1) Made after a 5-taxable-year period (defined in A–2 of this section); and

(2) Made on or after the date on which the owner attains age 59½, made to a beneficiary or the estate of the owner on or after the date of the owner's death, attributable to the owner's being disabled within the meaning of section 72(m)(7), or to which section 72(t)(2)(F) applies (exception for first-time home purchase).

(c) An amount distributed from a Roth IRA will not be included in gross income to the extent it is rolled over to another Roth IRA on a tax-free basis under the rules of sections 408(d)(3) and 408A(e).

(d) Contributions that are returned to the Roth IRA owner in accordance with section 408(d)(4) (corrective distributions) are not includible in gross income, but any net income required to be distributed under section 408(d)(4) together with the contributions is includible in gross income for the taxable year in which the contributions were made.

Q–2. When does the 5-taxable-year period described in A–1 of this section (relating to qualified distributions) begin and end?

A–2. The 5-taxable-year period described in A–1 of this section begins on the first day of the individual's taxable year for which the first regular contribution is made to any Roth IRA of the individual or, if earlier, the first day of the individual's taxable year in which the first conversion contribution is made to any Roth IRA of the individual. The 5-taxable-year period ends on the last day of the individual's fifth consecutive taxable year beginning with the taxable year described in the preceding sentence. For example, if an individual whose taxable year is the calendar year makes a first-time regular Roth IRA contribution any time between January 1, 1998, and April 15, 1999, for 1998, the 5-taxable-year period begins on January 1, 1998. Thus, each Roth IRA owner has only one 5-taxable-year period described in A–1 of this section for all the Roth IRAs of which he or she is the owner. Further, because of the requirement of the 5-taxable-year period, no qualified distributions can occur before taxable years beginning in 2003. For purposes of this A–2, the amount of any contribution distributed as a corrective distribution under A–1(d) of this section is treated as if it was never contributed.

Q–3. If a distribution is made to an individual who is the sole beneficiary of his or her deceased spouse's Roth IRA and the individual is treating the Roth IRA as his or her own, can the distribution be a qualified distribution based on being made to a beneficiary on or after the owner's death?

A–3. No. If a distribution is made to an individual who is the sole beneficiary of his or her deceased spouse's Roth IRA and the individual is treating the Roth IRA as his or her own, then, in accordance with § 1.408A–2 A–4, the distribution is treated as coming from the individual's own Roth IRA and not the deceased spouse's Roth IRA. Therefore, for purposes of determining whether the distribution is a qualified distribution, it is not treated as made to a beneficiary on or after the owner's death.

Q–4. How is a distribution from a Roth IRA taxed if it is not a qualified distribution?

A–4. A distribution that is not a qualified distribution, and is neither contributed to another Roth IRA in a qualified rollover contribution nor constitutes a corrective distribution, is includible in the owner's gross income to the extent that the amount of the distribution, when added to the amount of all prior distributions from the owner's Roth IRAs (whether or not they were qualified distributions) and reduced by the amount of those prior distributions previously includible in gross income, exceeds the owner's contributions to all his or her Roth IRAs. For purposes of this A–4, any amount distributed as a corrective distribution is treated as if it was never contributed.

Q–5. Will the additional tax under 72(t) apply to the amount of a distribution that is not a qualified distribution?

A–5. (a) The 10-percent additional tax under section 72(t) will apply (unless the distribution is excepted under section 72(t)) to any distribution from a Roth IRA includible in gross income.

(b) The 10-percent additional tax under section 72(t) also applies to a nonqualified distribution, even if it is not then includible in gross income, to the extent it is allocable to a conversion contribution, if the distribution is made within the 5-taxable-year period beginning with the first day of the individual's taxable year in which the conversion contribution was made. The 5-taxable-year period ends on the last day of the individual's fifth consecutive taxable year beginning with the taxable year described in the preceding sentence. For purposes of applying the tax, only the amount of the conversion contribution includible in gross income as a result of the conversion is taken into account. The exceptions under section 72(t) also apply to such a distribution.

(c) The 5-taxable-year period described in this A–5 for purposes of determining whether section 72(t) applies to a distribution allocable to a conversion contribution is separately determined for each conversion contribution, and need not be the same as the 5-taxable-year period used for purposes of determining whether a distribution is a qualified distribution under A–1(b) of this section. For example, if a calendar-year taxpayer who received a distribution from a traditional IRA on December 31, 1998, makes a conversion contribution by contributing the distributed amount to a Roth IRA on February 25, 1999 in a qualifying rollover contribution and makes a regular contribution for 1998 on the same date, the 5-taxable-year period for purposes of this A–5 begins on

January 1, 1999, while the 5-taxable-year period for purposes of A–1(b) of this section begins on January 1, 1998.

Q–6. Is there a special rule for taxing distributions allocable to a 1998 conversion?

A–6. Yes. In the case of a distribution from a Roth IRA in 1998, 1999 or 2000 of amounts allocable to a 1998 conversion with respect to which the 4-year spread for the resultant income inclusion applies (see § 1.408A–4 A–8), any income deferred as a result of the election to years after the year of the distribution is accelerated so that it is includible in gross income in the year of the distribution up to the amount of the distribution allocable to the 1998 conversion (determined under A–8 of this section). This amount is in addition to the amount otherwise includible in the owner's gross income for that taxable year as a result of the conversion. However, this rule will not require the inclusion of any amount to the extent it exceeds the total amount of income required to be included over the 4-year period. The acceleration of income inclusion described in this A–6 applies in the case of a surviving spouse who elects to continue the 4-year spread in accordance with § 1.408A–4 A–11(b).

Q–7. Is the 5-taxable-year period described in A–1 of this section redetermined when a Roth IRA owner dies?

A–7. (a) No. The beginning of the 5-taxable-year period described in A–1 of this section is not redetermined when the Roth IRA owner dies. Thus, in determining the 5-taxable-year period, the period the Roth IRA is held in the name of a beneficiary, or in the name of a surviving spouse who treats the decedent's Roth IRA as his or her own, includes the period it was held by the decedent.

(b) The 5-taxable-year period for a Roth IRA held by an individual as a beneficiary of a deceased Roth IRA owner is determined independently of the 5-taxable-year period for the beneficiary's own Roth IRA. However, if a surviving spouse treats the Roth IRA as his or her own, the 5-taxable-year period with respect to any of the surviving spouse's Roth IRAs (including the one that the surviving spouse treats as his or her own) ends at the earlier of the end of either the 5-taxable-year period for the decedent or the 5-taxable-year period applicable to the spouse's own Roth IRAs.

Q–8. How is it determined whether an amount distributed from a Roth IRA is allocated to regular contributions, conversion contributions, or earnings?

A–8. (a) Any amount distributed from an individual's Roth IRA is treated as made in the following order (determined as of the end of a taxable year and exhausting each category before moving to the following category)—

(1) From regular contributions;

(2) From conversion contributions, on a first-in-first-out basis; and

(3) From earnings.

(b) To the extent a distribution is treated as made from a particular conversion contribution, it is treated as made first from the portion, if any, that was includible in gross income as a result of the conversion.

Q–9. Are there special rules for determining the source of distributions under A–8 of this section?

A–9. Yes. For purposes of determining the source of distributions, the following rules apply:

(a) All distributions from all an individual's Roth IRAs made during a taxable year are aggregated.

(b) All regular contributions made for the same taxable year to all the individual's Roth IRAs are aggregated and added to the undistributed total regular contributions for prior taxable years. Regular contributions for a taxable year include contributions made in the following taxable year that are identified as made for the taxable year in accordance with § 1.408A–3 A–2. For example, a regular contribution made in 1999 for 1998 is aggregated with the contributions made in 1998 for 1998.

(c) All conversion contributions received during the same taxable year by all the individual's Roth IRAs are aggregated. Notwithstanding the preceding sentence, all conversion contributions made by an individual during 1999 that were distributed from a traditional IRA in 1998 and with respect to which the 4-year spread applies are treated for purposes of A–8(b) of this section as contributed to the individual's Roth IRAs prior to any other conversion contributions made by the individual during 1999.

(d) A distribution from an individual's Roth IRA that is rolled over to another Roth IRA of the individual in accordance with section 408A(e) is disregarded for purposes of determining the amount of both contributions and distributions.

(e) Any amount distributed as a corrective distribution (including net income), as described in A–1(d) of this section, is disregarded in determining the amount of contributions, earnings, and distributions.

(f) If an individual recharacterizes a contribution made to a traditional IRA (FIRST IRA) by transferring the contribution to a Roth IRA (SECOND IRA) in accordance with § 1.408A–5, then, pursuant to § 1.408A–5 A–3, the contribution to the Roth IRA is taken into account for the same taxable year for which it would have been taken into account if the contribution had originally been made to the Roth IRA and had never been contributed to the traditional IRA. Thus, the contribution to the Roth IRA is treated as contributed to the Roth IRA on the same date and for the same taxable year that the contribution was made to the traditional IRA.

(g) If an individual recharacterizes a regular or conversion contribution made to a Roth IRA (FIRST IRA) by transferring the contribution to a traditional IRA (SECOND IRA) in accordance with § 1.408A–5, then pursuant to § 1.408A–5 A–3, the contribution to the Roth IRA and the recharacterizing transfer are disregarded in determining the amount of both contributions and distributions for the taxable year with respect to which the original contribution was made to the Roth IRA.

(h) Pursuant to § 1.408A–5 A–3, the effect of income or loss (determined in accordance with § 1.408A–5 A–2) occurring after the contribution to the FIRST IRA is disregarded in determining the amounts described in paragraphs (f) and (g) of this A–9. Thus, for purposes of paragraphs (f) and (g), the amount of the contribution is determined based on the original contribution.

Q–10. Are there examples to illustrate the ordering rules described in A–8 and A–9 of this section?

A–10. Yes. The following examples illustrate these ordering rules:

*Example 1.* In 1998, individual B converts $80,000 in his traditional IRA to a Roth IRA. B has a basis of $20,000 in the conversion amount and so must include the remaining $60,000 in gross income. He decides to spread the $60,000 income by including $15,000 in each of the 4 years 1998–2001, under the rules of § 1.408A–4 A–8. B also makes a regular contribution of $2,000 in 1998. If a distribution of $2,000 is made to B anytime in 1998, it will be treated as made entirely from the regular contributions, so there will be no Federal income tax consequences as a result of the distribution.

*Example 2.* The facts are the same as in *Example 1*, except that the distribution made in 1998 is $5,000. The distribution is treated as made from $2,000 of regular contributions and $3,000 of conversion contributions that were includible in gross income. As a result, B must include $18,000 in gross income for 1998: $3,000 as a result of the acceleration of amounts that otherwise would have been included in later years under the 4-year-spread rule and $15,000 includible under the regular 4-year-spread rule. In addition, because the $3,000 is allocable to a conversion made within the previous 5

taxable years, the 10-percent additional tax under section 72(t) would apply to this $3,000 distribution for 1998, unless an exception applies. Under the 4-year-spread rule, B would now include in gross income $15,000 for 1999 and 2000, but only $12,000 for 2001, because of the accelerated inclusion of the $3,000 distribution.

*Example 3.* The facts are the same as in *Example 1,* except that B makes an additional $2,000 regular contribution in 1999 and he does not take a distribution in 1998. In 1999, the entire balance in the account, $90,000 ($84,000 of contributions and $6,000 of earnings), is distributed to B. The distribution is treated as made from $4,000 of regular contributions, $60,000 of conversion contributions that were includible in gross income, $20,000 of conversion contributions that were not includible in gross income, and $6,000 of earnings. Because a distribution has been made within the 4-year-spread period, B must accelerate the income inclusion under the 4-year-spread rule and must include in gross income the $45,000 remaining under the 4-year-spread rule in addition to the $6,000 of earnings. Because $60,000 of the distribution is allocable to a conversion made within the previous 5 taxable years, it is subject to the 10-percent additional tax under section 72(t) as if it were includible in gross income for 1999, unless an exception applies. The $6,000 allocable to earnings would be subject to the tax under section 72(t), unless an exception applies. Under the 4-year-spread rule, no amount would be includible in gross income for 2000 or 2001 because the entire amount of the conversion that was includible in gross income has already been included.

*Example 4.* The facts are the same as in *Example 1,* except that B also makes a $2,000 regular contribution in each year 1999 through 2002 and he does not take a distribution in 1998. A distribution of $85,000 is made to B in 2002. The distribution is treated as made from the $10,000 of regular contributions (the total regular contributions made in the years 1998–2002), $60,000 of conversion contributions that were includible in gross income, and $15,000 of conversion contributions that were not includible in gross income. As a result, no amount of the distribution is includible in gross income; however, because the distribution is allocable to a conversion made within the previous 5 years, the $60,000 is subject to the 10-percent additional tax under section 72(t) as if it were includible in gross income for 2002, unless an exception applies.

*Example 5.* The facts are the same as in *Example 4,* except no distribution occurs in 2002. In 2003, the entire balance in the account, $170,000 ($90,000 of contributions and $80,000 of earnings), is distributed to B. The distribution is treated as made from $10,000 of regular contributions, $60,000 of conversion contributions that were includible in gross income, $20,000 of conversion contributions that were not includible in gross income, and $80,000 of earnings. As a result, for 2003, B must include in gross income the $80,000 allocable to earnings, unless the distribution is a qualified distribution; and if it is not a qualified distribution, the $80,000 would be subject to the 10-percent additional tax under section 72(t), unless an exception applies.

*Example 6.* Individual C converts $20,000 to a Roth IRA in 1998 and $15,000 (in which amount C had a basis of $2,000) to another Roth IRA in 1999. No other contributions are made. In 2003, a $30,000 distribution, that is not a qualified distribution, is made to C. The distribution is treated as made from $20,000 of the 1998 conversion contribution and $10,000 of the 1999 conversion contribution that was includible in gross income. As a result, for 2003, no amount is includible in gross income; however, because $10,000 is allocable to a conversion contribution made within the previous 5 taxable years, that amount is subject to the 10-percent additional tax under section 72(t) as if the amount were includible in gross income for 2003, unless an exception applies. The result would be the same whichever of C's Roth IRAs made the distribution.

*Example 7.* The facts are the same as in *Example 6,* except that the distribution is a qualified distribution. The result is the same as in Example 6, except that no amount would be subject to the 10-percent additional tax under section 72(t), because, to be a qualified distribution, the distribution must be made on or after the date on which the owner attains age 59½, made to a beneficiary or the estate of the owner on or after the date of the owner's death, attributable to the owner's being disabled within the meaning of section 72(m)(7), or to which section 72(t)(2)(F) applies (exception for a first-time home purchase). Under section 72(t)(2), each of these conditions is also an exception to the tax under section 72(t).

*Example 8.* Individual D makes a $2,000 regular contribution to a traditional IRA on January 1, 1999, for 1998. On April 15, 1999, when the $2,000 has increased to $2,500, D recharacterizes the contribution by transferring the $2,500 to a Roth IRA (pursuant to § 1.408A–5 A–1). In this case, D's regular contribution to the Roth IRA for 1998 is $2,000. The $500 of earnings is not treated as a contribution to the Roth IRA. The results would be the same if the $2,000 had decreased to $1,500 prior to the recharacterization.

*Example 9.* In December 1998, individual E receives a distribution from his traditional IRA of $300,000 and in January 1999 he contributes the $300,000 to a Roth IRA as a conversion contribution. In April 1999, when the $300,000 has increased to $350,000, E recharacterizes the conversion contribution by transferring the $350,000 to a traditional IRA. In this case, E's conversion contribution for 1998 is $0, because the $300,000 conversion contribution and the earnings of $50,000 are disregarded. The results would be the same if the $300,000 had decreased to $250,000 prior to the recharacterization. Further, since the conversion is disregarded, the $300,000 is not includible in gross income in 1998.

Q–11. If the owner of a Roth IRA dies prior to the end of the 5-taxable-year period described in A–1 of this section (relating to qualified distributions) or prior to the end of the 5-taxable-year period described in A–5 of this section (relating to conversions), how are different types of contributions in the Roth IRA allocated to multiple beneficiaries?

A–11. Each type of contribution is allocated to each beneficiary on a pro-rata basis. Thus, for example, if a Roth IRA owner dies in 1999, when the Roth IRA contains a regular contribution of $2,000, a conversion contribution of $6,000 and earnings of $1,000, and the owner leaves his Roth IRA equally to four children, each child will receive one quarter of each type of contribution. Pursuant to the ordering rules in A–8 of this section, an immediate distribution of $2,000 to one of the children will be deemed to consist of $500 of regular contributions and $1,500 of conversion contributions. A beneficiary's inherited Roth IRA may not be aggregated with any other Roth IRA maintained by such beneficiary (except for other Roth IRAs the beneficiary inherited from the same decedent), unless the beneficiary, as the spouse of the decedent and sole beneficiary of the Roth IRA, elects to treat the Roth IRA as his or her own (see A–7 and A–14 of this section).

Q–12. How do the withholding rules under section 3405 apply to Roth IRAs?

A–12. Distributions from a Roth IRA are distributions from an individual retirement plan for purposes of section 3405 and thus are designated distributions unless one of the exceptions in section 3405(e)(1) applies. Pursuant to section 3405(a) and (b), nonperiodic distributions from a Roth IRA are subject to 10-percent withholding by the payor and periodic payments are subject to withholding as if the payments were wages. However, an individual can elect to have no amount withheld in accordance with section 3405(a)(2) and (b)(2).

Q–13. Do the withholding rules under section 3405 apply to conversions?

A–13. Yes. A conversion by any method described in § 1.408A–4 A–1 is considered a designated distribution subject to section 3405. However, a conversion occurring in 1998 by means of a trustee-to-trustee transfer of an amount from a traditional IRA to a Roth IRA established with the same or a different trustee is not required to be treated as a designated distribution for purposes of section 3405. Consequently, no withholding is required with respect to such a conversion (without regard to whether or not the individual elected to have no withholding).

Q–14. What minimum distribution rules apply to a Roth IRA?

A–14. (a) No minimum distributions are required to be made from a Roth IRA

under section 408(a)(6) and (b)(3) (which generally incorporate the provisions of section 401(a)(9)) while the owner is alive. The post-death minimum distribution rules under section 401(a)(9)(B) that apply to traditional IRAs, with the exception of the at-least-as-rapidly rule described in section 401(a)(9)(B)(i), also apply to Roth IRAs.

(b) The minimum distribution rules apply to the Roth IRA as though the Roth IRA owner died before his or her required beginning date. Thus, generally, the entire interest in the Roth IRA must be distributed by the end of the fifth calendar year after the year of the owner's death unless the interest is payable to a designated beneficiary over a period not greater than that beneficiary's life expectancy and distribution commences before the end of the calendar year following the year of death. If the sole beneficiary is the decedent's spouse, such spouse may delay distributions until the decedent would have attained age 70½ or may treat the Roth IRA as his or her own.

(c) Distributions to a beneficiary that are not qualified distributions will be includible in the beneficiary's gross income according to the rules in A–4 of this section.

Q–15. Does section 401(a)(9) apply separately to Roth IRAs and individual retirement plans that are not Roth IRAs?

A–15. Yes. An individual required to receive minimum distributions from his or her own traditional or SIMPLE IRA cannot choose to take the amount of the minimum distributions from any Roth IRA. Similarly, an individual required to receive minimum distributions from a Roth IRA cannot choose to take the amount of the minimum distributions from a traditional or SIMPLE IRA. In addition, an individual required to receive minimum distributions as a beneficiary under a Roth IRA can only satisfy the minimum distributions for one Roth IRA by distributing from another Roth IRA if the Roth IRAs were inherited from the same decedent.

Q–16. How is the basis of property distributed from a Roth IRA determined for purposes of a subsequent disposition?

A–16. The basis of property distributed from a Roth IRA is its fair market value (FMV) on the date of distribution, whether or not the distribution is a qualified distribution. Thus, for example, if a distribution consists of a share of stock in XYZ Corp. with an FMV of $40.00 on the date of distribution, for purposes of determining gain or loss on the subsequent sale of the share of XYZ Corp. stock, it has a basis of $40.00.

Q–17. What is the effect of distributing an amount from a Roth IRA and contributing it to another type of retirement plan other than a Roth IRA?

A–17. Any amount distributed from a Roth IRA and contributed to another type of retirement plan (other than a Roth IRA) is treated as a distribution from the Roth IRA that is neither a rollover contribution for purposes of section 408(d)(3) nor a qualified rollover contribution within the meaning of section 408A(e) to the other type of retirement plan. This treatment also applies to any amount transferred from a Roth IRA to any other type of retirement plan unless the transfer is a recharacterization described in § 1.408A–5.

Q–18. Can an amount be transferred directly from an education IRA to a Roth IRA (or distributed from an education IRA and rolled over to a Roth IRA)?

A–18. No amount may be transferred directly from an education IRA to a Roth IRA. A transfer of funds (or distribution and rollover) from an education IRA to a Roth IRA constitutes a distribution from the education IRA and a regular contribution to the Roth IRA (rather than a qualified rollover contribution to the Roth IRA).

Q–19. What are the Federal income tax consequences of a Roth IRA owner transferring his or her Roth IRA to another individual by gift?

A–19. A Roth IRA owner's transfer of his or her Roth IRA to another individual by gift constitutes an assignment of the owner's rights under the Roth IRA. At the time of the gift, the assets of the Roth IRA are deemed to be distributed to the owner and, accordingly, are treated as no longer held in a Roth IRA. In the case of any such gift of a Roth IRA made prior to October 1, 1998, if the entire interest in the Roth IRA is reconveyed to the Roth IRA owner prior to January 1, 1999, the Internal Revenue Service will treat the gift and reconveyance as never having occurred for estate tax, gift tax, and generation-skipping tax purposes and for purposes of this A–19.

**§ 1.408A–7 Reporting.**

This section sets forth the following questions and answers that relate to the reporting requirements applicable to Roth IRAs:

Q–1. What reporting requirements apply to Roth IRAs?

A–1. Generally, the reporting requirements applicable to IRAs other than Roth IRAs also apply to Roth IRAs, except that, pursuant to section 408A(d)(3)(D), the trustee of a Roth IRA must include on Forms 1099–R and 5498 additional information as described in the instructions thereto. Any conversion of amounts from an IRA other than a Roth IRA to a Roth IRA is treated as a distribution for which a Form 1099–R must be filed by the trustee maintaining the non-Roth IRA. In addition, the owner of such IRAs must report the conversion by completing Form 8606. In the case of a recharacterization described in § 1.408A–5 A–1, IRA owners must report such transactions in the manner prescribed in the instructions to the applicable Federal tax forms.

Q–2. Can a trustee rely on reasonable representations of a Roth IRA contributor or distributee for purposes of fulfilling reporting obligations?

A–2. A trustee maintaining a Roth IRA is permitted to rely on reasonable representations of a Roth IRA contributor or distributee for purposes of fulfilling reporting obligations.

**§ 1.408A–8 Definitions.**

This section sets forth the following question and answer that provides definitions of terms used in the provisions of §§ 1.408A–1 through 1.408A–7 and this section:

Q–1. Are there any special definitions that govern in applying the provisions of §§ 1.408A–1 through 1.408A–7 and this section?

A–1. Yes, the following definitions govern in applying the provisions of §§ 1.408A–1 through 1.408A–7 and this section. Unless the context indicates otherwise, the use of a particular term excludes the use of the other terms.

(a) *Different types of IRAs*—(1) *IRA.* Sections 408(a) and (b), respectively, describe an individual retirement account and an individual retirement annuity. The term IRA means an IRA described in either section 408(a) or (b), including each IRA described in paragraphs (a)(2) through (5) of this A–1. However, the term IRA does not include an education IRA described in section 530.

(2) *Traditional IRA.* The term traditional IRA means an individual retirement account or individual retirement annuity described in section 408(a) or (b), respectively. This term includes a SEP IRA but does not include a SIMPLE IRA or a Roth IRA.

(3) *SEP IRA.* Section 408(k) describes a simplified employee pension (SEP) as an employer-sponsored plan under which an employer can make contributions to IRAs established for its employees. The term SEP IRA means an IRA that receives contributions made under a SEP. The term SEP includes a salary reduction SEP (SARSEP) described in section 408(k)(6).

(4) *SIMPLE IRA.* Section 408(p) describes a SIMPLE IRA Plan as an employer-sponsored plan under which an employer can make contributions to SIMPLE IRAs established for its employees. The term SIMPLE IRA means an IRA to which the only contributions that can be made are contributions under a SIMPLE IRA Plan or rollovers or transfers from another SIMPLE IRA.

(5) *Roth IRA.* The term Roth IRA means an IRA that meets the requirements of section 408A.

(b) *Other defined terms or phrases*—(1) *4-year spread.* The term 4-year spread is described in § 1.408A–4 A–8.

(2) *Conversion.* The term conversion means a transaction satisfying the requirements of § 1.408A–4 A–1.

(3) *Conversion amount or conversion contribution.* The term conversion amount or conversion contribution is the amount of a distribution and contribution with respect to which a conversion described in § 1.408A–4 A–1 is made.

(4) *Failed conversion.* The term failed conversion means a transaction in which an individual contributes to a Roth IRA an amount transferred or distributed from a traditional IRA or Simple IRA (including a transfer by redesignation) in a transaction that does not constitute a conversion under § 1.408A–4 A–1.

(5) *Modified AGI.* The term modified AGI is defined in § 1.408A–3 A–5.

(6) *Recharacterization.* The term recharacterization means a transaction described in § 1.408A–5 A–1.

(7) *Recharacterized amount or recharacterized contribution.*The term recharacterized amount or recharacterized contribution means an amount or contribution treated as contributed to an IRA other than the one to which it was originally contributed pursuant to a recharacterization described in § 1.408A–5 A–1.

(8) *Taxable conversion amount.* The term taxable conversion amount means the portion of a conversion amount includible in income on account of a conversion, determined under the rules of section 408(d)(1) and (2).

(9) *Tax-free transfer.* The term tax-free transfer means a tax-free rollover described in section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10) or 408(d)(3), or a tax-free trustee-to-trustee transfer.

(10) *Treat an IRA as his or her own.* The phrase treat an IRA as his or her own means to treat an IRA for which a surviving spouse is the sole beneficiary as his or her own IRA after the death of the IRA owner in accordance with the terms of the IRA instrument or in the manner provided in the regulations under section 408(a)(6) or (b)(3).

(11) *Trustee.* The term trustee includes a custodian or issuer (in the case of an annuity) of an IRA (except where the context clearly indicates otherwise).

**§ 1.408A–9 Effective date.**

This section contains the following question and answer providing the effective date of §§ 1.408A–1 through 1.408A–8:

Q–1. To what taxable years do §§ 1.408A–1 through 1.408A–8 apply?

A–1 Sections 1.408A–1 through 1.408A–8 apply to taxable years beginning on or after January 1, 1998.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Paragraph 9.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par.10.** In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB control numbers.**

* * * * *

(c) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.408A–2 | 1545–1616 |
| 1.408A–4 | 1545–1616 |
| 1.408A–5 | 1545–1616 |
| 1.408A–7 | 1545–1616 |
| * * * * * | |

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: January 25, 1999.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 99–2550 Filed 2–3–99; 8:45 am]

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## DEPARTMENT OF JUSTICE

## Parole Commission

## 28 CFR Part 2

## Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Interim rule; amendments.

**SUMMARY:** The U.S. Parole Commission is amending the interim rules that govern the parole process for prisoners serving sentences under the District of Columbia Code. The amendments provide criteria for filing applications to reduce a prisoner's minimum sentence, provide deadlines for conducting hearings for youth offenders, expand the guidelines for attempted murder to include offenses of equivalent violence, distinguish between current and prior offenses in the case of probation violators, improve the procedures for medical and geriatric parole applications, and add a new guideline for rewarding prisoners who substantially assist law enforcement.

**DATES:** *Effective Date:* February 4, 1999. *Comments:* Comments must be received by March 31, 1999.

**ADDRESSES:** Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

**SUPPLEMENTARY INFORMATION:** Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33) the U.S. Parole Commission assumed, on August 5, 1998, the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. At 63 FR Part IV (July 21, 1998), and 63 FR 57060 (October 26, 1998), the Commission published and amended interim regulations, with a request for public comment, to govern this new function. The Commission is again amending these interim regulations with a further request for public comment. The Commission intends that final rule making be considered later this year, once it is satisfied that it has had enough experience in the application of these rules to DC Code prisoners.

These amendments are intended to provide solutions to several problems encountered in processing applications for parole and other determinations involving DC Code prisoners since August 5, 1998. In the case of medical and geriatric paroles, comments received from the University of the District of Columbia have persuaded the