



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200634033

T:EP:RA:T2

APR 25 2006

Uniform Issue List 72-20-04

LEGEND:

Taxpayer A = *****

Company M = *****

IRA X = *****

Amount B = *****

Amount C = *****

Company N = *****

Company O = *****

IRA Y = *****

Amount P = *****

Dear *****:

This is in response to your letter dated June 10, 2005, and supplemented by additional correspondence dated February 9, 2006, February 20, 2006, March 15, 2006, March 16, 2006, March 30, 2006, and April 11, 2006, submitted on your behalf by your authorized representative in which you request a ruling as to whether a rollover into your individual retirement arrangement (IRA) will not result in a modification to a series of substantially equal periodic payments you were receiving and, therefore, will not be subject to the additional 10 percent tax imposed on premature distributions under section 72(t) of the Internal Revenue Code (Code).

The following facts and representations were made in support of your ruling request:

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Taxpayer A maintains IRA X, an IRA he established on August 4, , with Company M. Company O is the custodian of IRA X. Taxpayer A received annual distributions from IRA X in the form of a series of substantially equal periodic payments calculated under the fixed annuitization method, without recalculation. Taxpayer A was required to annually withdraw an aggregate amount, Amount B, from IRA X. The distributions from IRA X began on January 21, , and were intended to comply with the requirements of section 72(t)(2)(A)(iv) of the Code.

Taxpayer A separated from service on June 18, 2004 from Company N at the age of 59. In , Taxpayer A discussed with a Company M representative rolling over Amount C, a distribution he received from the qualified plan of his former employer, Company N, to an IRA managed by Company M. Taxpayer A requested paperwork from Company N to execute the rollover of Amount C. In the section regarding deposit instructions for the direct rollover, Taxpayer A wrote in his IRA X account number (the IRA from which he was receiving a series of substantially equal periodic payments) as the IRA into which Amount C should be deposited. The Company N paperwork authorizing the direct rollover of Amount C to IRA X was executed by Taxpayer A on August 9, . On October 22, , the Company N qualified plan distribution of Amount C was deposited into IRA X, the IRA from which Taxpayer A's series of substantially equal periodic payments were being taken.

Taxpayer A's last substantially equal periodic payment from IRA X was on October 1, , which was the final quarterly installment of Taxpayer A's 2004 series of substantially equal periodic payments. The October 22, rollover of Amount C occurred three months before the end of the five year period required by section 72(t)(4) of the Code and after the final quarterly payment was received by Taxpayer A.

Taxpayer A's series of substantially equal periodic payments from IRA X continued for the required five year period under section 72(t)(4)(ii)(I) of the Code, which ended on January 20, . Also on January 20, , a Company M financial advisor was notified by Company O that the rollover of Amount C into IRA X resulted in a modification of Taxpayer A's series of substantially equal periodic payments. In February , Taxpayer A filed paperwork with Company M to create IRA Y. On March 1, , Taxpayer A directed Company M to execute a transfer from IRA X to IRA Y of Amount C (the original rollover amount, including gains and losses).

Company O issued a calendar year Form 1099-R for IRA X that indicated an early distribution of Amount B. Company O also withheld both Federal and state income taxes from Amount B.

Based on the foregoing, Taxpayer A requests a ruling that the rollover of Amount C into IRA X, the IRA from which a series of substantially equal periodic payments were being taken, will not be considered a modification of a series of substantially equal periodic payments within the meaning of section 72(t)(4) of the Code.

Section 408(d)(1) of the Code provides, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 72 of the Code provides rules for determining how amounts received as annuities, endowments or life insurance contracts and distributions from qualified plans are to be taxed.

Section 72(t)(1) provides for the imposition of an additional 10 percent tax on early distributions from qualified plans, including IRAs. The additional tax is imposed on that portion of the distribution that is includible in gross income.

Section 72(t)(2)(A)(iv) of the Code provides that section 72(t)(1) shall not apply to distributions that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Section 72(t)(4) of the Code imposes the additional limitation on distributions excepted from the 10 percent tax by section 72(t)(2)(A)(iv) that, if the series of payments is subsequently modified (other than by reason of death or disability) before the later of the employee's attainment of age 59 $\frac{1}{2}$, then the taxpayer's tax for the first taxable year in which such modification occurs shall be increased by an amount determined under regulations, equal to the tax that would have been imposed except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

Notice 89-25 was published on March 20, 1989, and provided guidance, in the form of questions and answers, on certain provisions of the Tax Reform Act of 1986 (TRA '86). In the absence of regulations on section 72(t) of the Code, this notice provided guidance with respect to the exception to the tax on premature distributions provided under section 72(t)(2)(A)(iv). Question and Answer-12 of Notice 89-25 provides three methods of determining substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv) of the Code.

Revenue Ruling 2002-62, 2002-42 I.R.B. 710, which was published on October 21, 2002, modified Q&A-12 of Notice 89-25. Revenue Ruling 2002-62 provides, among other things, that payments are considered to be substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) if they are made in accordance with the required minimum distribution method, the fixed amortization method or the fixed annuitization method (the three methods described in Q&A-12 of Notice 89-25).

The fixed annuitization method provides that the annual payment for each year is determined by dividing the account balance by an annuity factor that is the present value of an annuity of one dollar (\$1) per year beginning at the taxpayer's age and continuing for the life of the taxpayer (or the joint lives of the individual and beneficiary). The annuity factor is derived using the mortality table in Appendix B of Revenue Ruling

2002-62 and using the chosen interest rate. Under this method, the account balance, the annuity factor, the chosen interest rate and the resulting annual payment are determined once for the first distribution year and the annual payment is the same amount in each succeeding year.

Section 2.02(d) of Revenue Ruling 2002-62 provides that the account balance that is used to determine payments must be determined in a reasonable manner based on the facts and circumstances.

Section 2.02(e) of Revenue Ruling 2002-62 further provides that under all three methods, substantially equal periodic payments are calculated with respect to an account balance as of the first valuation date selected in section 2.02(d). Thus, a modification to the series of payments will occur, if after such date, there is (i) any addition to the account balance other than gains or losses, (ii) any nontaxable transfer of a portion of the account balance to another retirement plan, or (iii) a rollover by the taxpayer of the amount received resulting in such amount not being taxable.

In this case, Taxpayer A states that he began receiving payments from IRA X on January 21, , in a series of substantially equal periodic payments as described in section 72(t)(2)(A)(iv) of the Code using the fixed annuitization method as described in Notice 89-25, without recalculation. Taxpayer A further states that the annual payment from IRA X as determined under the above methodology was Amount B. On August 9, , Taxpayer A completed paperwork instructing Company N to rollover Amount C, a distribution from Company N's qualified plan, into IRA X. On October 22, , as per Taxpayer A's instructions, Company N directly deposited Amount C into IRA X, the IRA from which he was receiving a series of substantially equal periodic payments. The deposit of Amount C into IRA X occurred three months before the end of the five year period required under section 72(t)(4) of the Code which ended on January 20, .

The rollover of Amount C into IRA X on October 22, , per Taxpayer A's instructions, resulted in a change to the IRA X account balance within the meaning of section 2.02(e) of Revenue Ruling 2002-62, and occurred on a date which is subsequent to the first valuation date Taxpayer A used to determine the IRA X account balance on which his series of substantially equal periodic payments were calculated.

Accordingly, we conclude that the rollover of Amount C into IRA X, the IRA from which substantially equal periodic payments were being taken, is considered a modification of a series of substantially equal periodic payments within the meaning of section 72(t)(4) of the Code.

This ruling does not express an opinion as to whether (but assumes that) the series of substantially equal periodic payments received from IRA X satisfied Code section 72(t)(2)(A)(iv) and Revenue Ruling 2002-62. This ruling assumes that IRA X meets the requirements of section 408 of the Code at all times relevant to this transaction.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the

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Code provides that it may not be used or cited by others as precedent.

A copy of this ruling has been sent to your authorized representative pursuant to the provision of a Form 2848 (Power of Attorney) on file in this office.

If you have any questions, please contact *****SE:T:EP:RA:T2.

Sincerely,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose Form 437