200720023

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

UICs: 72.20-00
72.20-05

FEB 2 1 2007

T:EP:RA:T3

LEGEND:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

Company M =

Company N =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Month 1 =

Month 2 =

Dear :

This is in response to the letter dated , submitted on your behalf by your authorized representative, as supplemented by correspondence dated , in which you request a ruling as to whether the distributions from your individual retirement arrangements (IRAs) described in your letter ruling request did not result in a modification to a series of substantially equal periodic payments and, therefore, are not subject to the additional 10 percent income 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.

Taxpayer A, whose date of birth was Date 4, 1947, is married to Taxpayer B whose date of birth was Date 5, 1951. Thus, as of the date of this ruling request, Taxpayer A had not attained age 59 ½.

Taxpayer A maintains IRA X with Company M. In Month 1, 1999, Taxpayer A began to receive distributions from his IRA X in the annual amount of Amount 2 which amount was calculated using the fixed annuity method described in Notice 89-25, 1989-1 C.B. 662. On or about Date 2, 1999, Taxpayer A transferred, by means of a trustee-to-trustee transfer, Amount 3 from IRA X to IRA Y, an IRA set up and maintained in his name with Company N. On or about Date 3, 2000, Taxpayer A transferred, by means of a trustee-to-trustee transfer, an additional Amount 4 from his IRA X to his IRA Y.

It has been represented that Taxpayer A received an annual distribution in the amount of Amount 2 from his IRA X each calendar year from 1999 to 2005. It has also been represented that the Date 1, 2005 value of Taxpayer A's IRA X was approximately Amount 1. It has also been represented that the Date 1, 2005 of Taxpayer A's IRA Y was approximately Amount 5, and that Taxpayer A received no distributions from his IRA Y.

As a result of a calendar year 2004 audit of his calendar year 2001 Federal Income Tax Return (Form 1040), Taxpayer A paid to the Internal Revenue Service a tax in the amount of Amount 6 representing the tax imposed under Code section 72(t)(1) and interest.

In Month 2, 2005, pursuant to discussions with his financial advisors, Taxpayer A transferred, by means of a trustee-to-trustee transfer, the entire amount standing in his IRA Y to IRA X. This request for letter ruling followed shortly thereafter.

Based on the above facts and circumstances, you, through your authorized representative, request the following letter ruling:

That the transaction described above, consisting of the calendar years 1999 and 2000 transfers from IRA X to IRA Y, and the calendar year 2005 transfer from IRA Y to IRA X did not constitute a "modification to a series of substantially equal periodic payments" as described in Code section 72(t)(4) which resulted in the imposition of a 10% additional income tax pursuant to Code section 72(t)(1).

With respect to your ruling request, section 408(d)(1) of the Code provides that, 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 (I) close of the 5-year period beginning with the date of the first payment and after the employee attains age 59 ½, or (II) before the employee's attainment of age 59 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 provides guidance with respect to the exception to the tax on premature distributions provided under section 72(t)(2)(A)(iv). Q&A-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, 2002-2 C.B. 710, modifies Q&A-12 of Notice 89-25. Rev. Rul. 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).

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 his IRA X during 1999 in the amount of Amount 2 calculated using the fixed annuity method described in Notice 89-25. In 1999 and 2000 Taxpayer A transferred, by means of trustee to trustee transfers, amounts from his IRA X to his IRA Y. The 1999 and 2000 transfers occurred prior to the end of the period described in Code section 72(t)(4).

Based on the above facts and representations, pursuant to section 2.02(e) of Rev. Rul. 2002-62, we determine that the calendar years 1999 and 2000 transfers from IRA X to IRA Y constituted modifications to the series of substantially equal payments which Taxpayer A began to receive from his IRA X during calendar year 1999.

Thus, as a result, we conclude with respect to your ruling request, as follows:

That the transaction described above, consisting of the calendar years 1999 and 2000 transfers from IRA X to IRA Y, and the calendar year 2005 transfer from IRA Y to IRA X did constitute a "modification to a series of substantially equal periodic payments" as described in Code section 72(t)(4). As a result, such modification resulted in the imposition of a 10% additional income tax pursuant to Code section 72(t)(1).

This letter ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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

If you have any questions, please contact (ID: ), SE:T:EP:RA:T3, at (phone-not a toll-free number) or (FAX).

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose