



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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JUN 3 2008

Uniform Issue List Number: 72.20-00, 72.20-04

T:EP:RA:T2

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Legend:

- Taxpayer A = xxxxx
- IRA X = xxxxx
- IRA Y = xxxxx
- Custodian B = xxxxx
- Individual C = xxxxx
- Company L = xxxxx
- Company M = xxxxx
- Company N = xxxxx
- Amount T = xxxxx
- Date 1 = xxxxx
- Date 2 = xxxxx
- Date 3 = xxxxx
- Date 4 = xxxxx
- Date 5 = xxxxx
- Date 6 = xxxxx
- Date 7 = xxxxx

Dear xxxxx :

This is in response to your letter dated June 22, 2007, as supplemented by correspondence dated October 5, and November 9, 2007, and January 16, and March 19, 2008, submitted on your behalf by your authorized representative, requesting a ruling as to whether the failure to make a distribution from your individual retirement arrangement (IRA) in 2006 and the subsequent "make-up" distribution in 2007 will not result in a modification to a series of substantially equal periodic payments under section 72(t)(4) of the Internal Revenue Code ("Code"), and therefore will not be subject to the additional 10 percent tax imposed on early distributions under section 72(t) of the Code.

The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, who has retired from employment, was under 59 ½ during 2006. Taxpayer A maintains two traditional IRA accounts, IRA X and IRA Y. Custodian B is the custodian of both accounts, and Company N is Custodian B's agent for administering the IRA accounts. Taxpayer A represents that she began receiving distributions from her IRA accounts in 2001 in the form of a series of substantially equal periodic payments intended to comply with the requirements of section 72(t)(2)(A)(iv) of the Code, Notice 89-25, and Revenue Ruling 2002-62.

Individual C is Taxpayer A's broker. Individual C is employed by Company L, a financial group affiliated with Company M. Company M processes IRA distribution requests from Individual C. Taxpayer A represents that, on Date 1, she contacted Individual C to remind him of the distributions required for calendar year . On Date 2, Individual C sent Taxpayer A two IRA distribution forms for Taxpayer A to complete, sign and return to him. On Date 3, Individual C received from Taxpayer A completed, signed distribution request forms for IRA X and IRA Y. Under item 2 on each distribution request form Taxpayer A notated that she was under the age of 59 1/2 and wanted to continue

the schedule of substantially equal periodic payments. Under item 3 of each distribution request form Taxpayer A checked box B. for a "partial distribution in-kind to my non-retirement brokerage account". In compliance with the instructions below Box B. requesting the security names and share/unit amount(s) for the security position(s) to be distributed in-kind, Taxpayer A completed a distribution instruction form with respect to each distribution request form, which detailed separately the in-kind transfer of stock from IRA X and the in-kind transfer of stock from IRA Y. Individual C represents that on Date 3, he forwarded the two distribution request forms, to each of which was attached a copy of the distribution instruction form, to the main office of Company M which, in turn, was responsible for forwarding the forms to Company N. On Date 4, Company N sent the forms to Custodian B, but did not attach the instruction form

to each request. Custodian B processed the request with respect to IRA X but rejected the request with respect to IRA Y.

Taxpayer A represents that she received confirmation of the distribution from IRA X on Date 5, and she contacted Individual C to inquire whether the distribution from IRA Y had been made. She further represents that Individual C contacted Company M and informed Company M that the distribution had not been made.

Taxpayer A represents that on Date 6, she informed Individual C that her IRA statement did not show that the distribution that she had requested from IRA Y had been processed during 2006. On Date 6, Individual C again sent the distribution request forms to Company M, requesting that the distribution be for 2006. The distribution of Amount T was made on Date 6, but was made for 2007. Taxpayer A received confirmation of the distribution on Date 7.

Based on the foregoing, you request a ruling that failure to distribute the required distribution amount from IRA Y for 2006 in the calendar year and the subsequent make-up distribution from IRA Y in the calendar year will not be considered a modification to a series of substantially equal periodic payments under section 72(t)(4) of the Code that will result in the imposition of the 10 percent additional tax imposed on early distributions under section 72(t)(1) of the Code with respect to IRA Y.

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) of the Code 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) of the Code 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) of the Code that, if the

series of payments is subsequently modified (other than by reason of death or disability) (a) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59 ½, or (b) before the employee attains age 59 ½, 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 but for section 72(t)(2)(A)(iv), plus interest for the deferral period.

Notice 89-25, 1989-1 C.B. 662, provided guidance, in the form of questions and answers, on certain provisions of the Tax Reform Act of 1986. 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 early distributions provided under section 72(t)(2)(A)(iv) of the Code. Q&A-12 of Notice 89-25 provides three methods for 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, 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) of the Code 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).

In this case, Taxpayer A states that she was receiving payments from her IRAs since 2001 in a series of substantially equal periodic payments intended to satisfy section 72(t)(2)(A)(iv) of the Code. Taxpayer A has submitted documentation showing that on Date 3, she requested that Company M distribute Amount T, the required annual amount, from IRA Y. If Amount T had been distributed according to Taxpayer A's instructions, Taxpayer A would have received the amount in the taxable year. Taxpayer A has provided evidence that Amount T would have constituted an amount with respect to the taxable year which was substantially equal to the amounts received by Taxpayer A in prior years.

Documentation submitted by Taxpayer A shows she completed the necessary forms and provided them timely to an appropriate representative of the financial institution responsible for overseeing the distribution process and for ensuring that the annual amount be distributed from IRA Y for the taxable year on or before December 31 of such year. Taxpayer A did not intend to modify the series of substantially equal periodic payments she had been receiving from her IRAs since 2001. Rather, the modification is due to the failure of Company M to make the distribution of Amount T in 2006. In addition, Taxpayer A has represented that she intends to use the same method for determining the annual payments from IRA Y that she had been using prior to 2007. Thus, as a result of Company M's failure to distribute Amount T in 2006, the required amount was not distributed from IRA Y for 2006, and the subsequent "make-up" distribution of

Amount T in 2007, when added to the required annual distribution for 2007, will result in Taxpayer A receiving an amount for calendar year that will be more than the annual payment determined under the method used by Taxpayer A.

Accordingly, we conclude that the failure to distribute the entire required annual payment from IRA Y for the calendar year and the subsequent "make-up" distribution for the calendar year made in the following calendar year are not considered a modification of a series of substantially equal periodic payments under section 72(t)(2)(A)(iv) of the Code and, therefore, IRA Y will not be subject to the 10 percent additional tax imposed on early distributions under section 72(t)(1) of the Code.

This ruling does not express an opinion as to whether (but assumes that) the series of substantially equal payments Taxpayer A is currently receiving from IRA Y satisfies Code section 72(t)(A)(iv) and Revenue Ruling 2002-62.

This ruling assumes that IRA Y meets the requirements of Code section 408(a) at all times relevant to this transaction.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter ruling 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 question regarding this ruling, please contact xxxxx, ID Number xxxxx, SE:T:EP:RA:T4 at (202) 283- xxxxx.

Sincerely,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: xxxxx
xxxxx
xxxxx