200929021

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 21 2009

Uniform Issue List: 72.20-04

SE:T:EP:RA:T1

Control Number:

Legend:

Taxpayer =

IRA A =

Financial Institution B =

IRA C =

Financial Institution D =

Individual E =

Financial Institution F =

Account G =

Employer H =

Employer I =

Employer J =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This responds to a letter dated November 9, 2007, as supplemented by correspondence dated May 23 and May 27, 2008, from your authorized representative, in which you request a ruling that an inadvertent 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 result in an imposition of the additional 10 percent tax on premature distributions under section 72(t) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer maintained IRA A which was sponsored by Financial Institution B. On or about March 30, 1999, Taxpayer made a rollover contribution of Amount 1 into IRA A. On or about April 12, 1999, when she was age 52, Taxpayer began receiving a series of substantially equal periodic payments from IRA A calculated under the fixed amortization method equaling approximately Amount 2 per month. The distributions were intended to comply with the requirements of section 72(t)(2)(A)(iv) of the Code. During July of 2002, Taxpayer made a trustee-to-trustee transfer of the entire account balance in IRA A to IRA C, sponsored by Financial Institution D. The substantially equal periodic payments continued without interruption or modification throughout the transfer.

Taxpayer's series of substantially equal periodic payments from IRA A (subsequently IRA C) continued for the required five year period under section 72(t)(4)(A)(ii) of the Code which ended on April 12, 2004.

On or about December 17, 2002, Individual E, Taxpayer's financial advisor at Financial Institution F, advised her that, pursuant to Revenue Ruling 2002-62, 2002-42 I.R.B. 710, section 2.03(b), she could make a one-time change in the calculation of her substantially equal periodic payments from the fixed amortization method to the required minimum distribution method, resulting in a new monthly payment of Amount 3. The change occurred in January of 2006.

Previously, Taxpayer worked for Employers H and I and participated in their qualified retirement plans. On or about April 21, 2003, Financial Institution F received a rollover check from Employer H on behalf of Taxpayer and deposited it into Account G (on or about April 23, 2003), a tax-sheltered annuity maintained under section 403(b) of the Code. On or about June 9, 2003, Taxpayer made a direct transfer of her account balance in Employer I's retirement system to Account G.

On or about July 26, 2006, Taxpayer informed Individual E that, due to her recent termination of employment, she wanted to roll over her account balance (Amount 4) in a retirement plan sponsored by Employer J. Individual E advised that Amount 4 could only be rolled over to Account G, but not IRA C from which substantially equal periodic payments were being received. On or about July 27, 2006, Individual E's assistant erroneously completed a form causing Amount 4 to be deposited in IRA C instead of Account G. Amount 4 was inadvertently deposited into IRA C on August 14, 2006. On or about March 30, 2007, Taxpayer called Individual E to discuss investment options for IRA C. The error was discovered a few days later. Individual E was concerned that the addition of Amount 4 into IRA C resulted in a modification of the series of substantially equal periodic payments that Taxpayer was receiving. You have represented that Financial Institution F acknowledged the inadvertent error.

Based on the above facts and representations, you request a ruling that the inadvertent rollover of Amount 4 into IRA C during 2006 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 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 except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

Notice 89-25, 1989-1 C.B. 662 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 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, which was published on October 21, 2002, modifies 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 amortization method provides that the annual payment for each year is determined by amortizing in level amounts the account balance over a specified number of years determined using the chosen life expectancy table and chosen interest rate. Under this method, the account balance, the number from the chosen life expectancy table and the resulting annual payment are determined once for the first distribution year and the annual payment is the same amount in each subsequent year.

The required minimum distribution method provides that the annual payment for each year is determined by dividing the account balance for that year by the number from the chosen life expectancy table for that year. Under this method, the account balance, the number from the chosen life expectancy table and the resulting annual payments are redetermined for each year.

An individual who begins receiving distributions in a year using either the fixed amortization method or the fixed annuitization method may in any subsequent year switch to the required minimum distribution method to determine payment for the year of the switch and all subsequent years and the change in method will not be treated as a modification within the meaning of section 72(t)(4) of the Code. Once this change is made, the required minimum distribution method must be followed in all subsequent years. Any subsequent change will be a modification for purposes of section 72(t)(4) of the Code.

In this case, Taxpayer states that she began receiving payments from IRA A, in calendar year 1999, in a series of substantially equal periodic payments as described in section 72(t)(2)(A)(iv) of the Code using the fixed amortization method as described in Notice 89-25. Taxpayer further states that the monthly payment from IRA A as determined under the above methodology was Amount 2. In July of 2002, Taxpayer made a direct transfer of her entire account balance in IRA A to IRA C. Taxpayer received substantially equal periodic payments from IRA A and IRA C for seven years using the fixed amortization method. In January of 2006, based upon section 2.03(b) of Revenue Ruling 2002-62, Taxpayer changed from the fixed amortization method to the required minimum distribution method, resulting in a new monthly payment of Amount 3.

Taxpayer states that on July 27, 2006, she requested that Financial Institution F roll over Amount 4 from a retirement plan sponsored by Employer J to Account G. However, in error, Financial Institution F rolled Amount 4 into IRA C, the IRA from which Taxpayer was receiving the series of substantially equal periodic payments. Taxpayer states that the required five year period under section 72(t)(4)(A)(ii) of the Code ended on April 12, 2004.

If Amount 4 had been rolled over into Account G as requested by Taxpayer on July 27, 2006, Financial Institution F would not have raised the issue of modification regarding calendar year

Taxpayer did all she could to continue to receive Amount 3 from IRA C and had no reason to believe that Financial Institution F would not make the rollover of Amount 4 from Employer J's retirement plan to Account G as requested. Taxpayer did not intend to modify the series of substantially equal periodic payments she began receiving from IRA A (and subsequently IRA C) in calendar year . Rather, the modification is due to the failure of Financial Institution F to roll over Amount 4 into Account G instead of IRA C in calendar year

Based on the foregoing, we conclude that the error made by Financial Institution F that resulted in Amount 4 being rolled into IRA C in calendar year will not be considered a modification of a series of substantially equal periodic payments from IRA C within the meaning of section 72(t)(4) of the Code that would result in an imposition of the 10 percent additional tax applied on premature distributions under section 72(t)(1).

This ruling does not express an opinion as to whether (but assumes that) the series of substantially equal periodic payments received from April, 1999 to July, 2006 from IRA A and subsequently from IRA C satisfied Code section 72(t)(2)(A)(iv) and Revenue Ruling 2002-62. This ruling assumes that IRA A and IRA C meet the requirements of section 408 of the Code at all times relevant to this transaction.

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

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

If you wish to inquire about this ruling, please contact , ,
(I.D. #), at ( ) .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose
Notice 437

cc: