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Internal Revenue Service

Department of the Treasury
Washington, DC 20224

SIN: 72.20-04

Person To Contact:

Telephone Number:

Refer Reply To: T:EP:RA:T3

Date: OCT 15 2001

LEGEND:

Taxpayer =

IRA 1 =

IRA 2 =

IRA 3 =

IRA 4 =

This is in response to a letter dated June 20, 2001, as supplemented by letters of July 25, 2001, August 10, 2001, and August 24, 2001, in which you, through your authorized representative, request rulings under sections 408(d)(6) and 72(t)(4)(A)(ii) of the Internal Revenue Code. The following facts and representations support your ruling request.

The Taxpayer maintains IRA's 1, 2, 3 and 4. It is represented that IRA's 1, 2, 3 and 4 meet the requirements of section 408(a) of the Code. The Taxpayer will attain age 59½ on November 30, 2007. In August 1998, the Taxpayer began receiving a series of substantially equal periodic payments from IRA's 1, 2, 3, and 4 as follows: from IRA 1 in the amount of $1,835 a month,

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amounting to approximately $22,020 on an annual basis, from IRA 2 in the amount of $2,100 a month, amounting to approximately $ 25,200 on an annual basis, from IRA 3 in the amount of $ 1,565 a month, amounting to approximately $18,780 on an annual basis, and from IRA 4 in the amount of $750 a month, amounting to $9,000 on an annual basis. He continued to receive monthly distributions from the IRA's 1, 2, 3 and 4 in the amounts described above in 1998, 1999, 2000 and 2001. It is represented that the stream of payments from IRA's 1, 2, 3 and 4 each qualify as a "series of substantially equal periodic payments" within the meaning of section 72(t)(2)(A)(iv) of the Code based on the Taxpayer's life expectancy.

On April 10, 2001, the Taxpayer and his former spouse were granted a judgement of divorce. It is represented that such a judgement of divorce is a decree or instrument described in section 71(b)(2)(A) of the Code.

The judgement of divorce requires that forty percent of IRA's 1, 2, 3 and 4 respectively will be transferred directly to new IRA's to be set up and maintained in the name of Taxpayer's spouse. Taxpayer will retain approximately sixty percent of the pre-divorce balances of IRA 1, 2, 3 and 4 respectively. As a result of the above referenced transfer, Taxpayer will reduce his monthly distribution from each IRA by forty percent. The reduction will commence in 2002, the calendar year after the year of the divorce.

Based on the above facts and representations, Taxpayer, through his authorized representative, requests the following letter rulings:

1. The division of IRA 's 1, 2, 3 and 4 and subsequent transfer of approximately forty percent of each IRA to IRA's in the name of Taxpayer's spouse pursuant to the decree of divorce will be considered a nontaxable transfer under section 408(d)(6) of the Code.

2. The reduction in the monthly distribution from IRA's 1, 2, 3 and 4 to Taxpayer beginning in calendar year 2002, prior to Taxpayer attaining age 59½, will not constitute a subsequent modification in his series of periodic payments, as the term "subsequent modification" is used in section 72(t)(4) of the Code and will not result in the imposition on Taxpayer of the ten percent additional income tax imposed by section 72(t)(1) pursuant to section 72(t)(4)(A).

3. Taxpayer may change the method of distribution and the amount thereof from IRA's 1, 2, 3 and 4 at any time after November 2007 without imposition of the ten percent additional income tax plus interest by section 72(t)(4)(A) of the Code because of a subsequent modification of a series of substantially equal periodic payments.

Section 408(d)(6) of the Code provides that an individual's IRA interest transferred pursuant to a decree of divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be treated as a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and is treated as an IRA of the former spouse and not of the original IRA holder. Thereafter, such transferred interest is to be treated as maintained for the benefit of the former spouse.

Section 72(t)(1) of the Code provides that if any taxpayer receives any amount from a qualified retirement plan as defined in section 4974 (which includes an IRA), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

Section 72(t)(2)(A)(iv) of the Code provides that a distribution from a qualified retirement plan that is 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 is not subject to the tax imposed by section 72(t)(1).

Section 72(t)(4)(A) of the Code provides that if paragraph (1) does not apply to a distribution by reason of paragraph (2)(A)(iv), and the series of payments under such paragraph are substantially modified (other than by reason of death or disability)-(i) 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 (ii) before the employee attains age 59 ½, 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 which (but for paragraph (2)(A)(iv)) would have been imposed, plus interest for the deferral period.

Section 72(t)(4)(B) of the Code defines the term "deferral period" as the period beginning with the taxable year in which (without regard to paragraph (2)(A)(iv)) the distribution would have been includible in gross income and ending with the taxable year in which the modification described in subparagraph (A) occurs.

With respect to your first ruling request, as noted above, section 408(d)(6) of the Code provides that IRA amounts transferred to an IRA of a former spouse pursuant to its provisions become the IRA property of the former spouse and that the transfer is not to be considered a taxable transfer. Thus, with respect to your first ruling request, we conclude that the division of IRA's 1, 2, 3 and 4 and subsequent transfer of approximately forty percent of each IRA to IRAs in the name of Taxpayer's spouse pursuant to the decree of divorce will be considered a nontaxable transfer under section 408(d)(6) of the Code.

With respect to your second ruling request, Taxpayer currently owns IRA's 1, 2, 3 and 4 from which, in August 1998, he commenced receiving monthly distributions in the amount of $1,835, $2,100, $1,565 and $750 respectively. It is represented that the stream of monthly distributions from IRA's 1, 2, 3 and 4 to Taxpayer are intended to comply with section 72(t)(2)(A)(iv) of the Code. Pursuant to his divorce decree Taxpayer is required to transfer forty percent of each IRA to an IRA set up and maintained in the name of his spouse. Taxpayer will have no interest in the new IRA's of his former spouse.

Taxpayer's calendar year 1998 through calendar year 2001 distributions from IRA's 1, 2, 3 and 4 were based on the respective IRA balances prior to the divorce. Said balances will decline by approximately forty percent because of the divorce of Taxpayer and his spouse. In this regard, the Service believes that compliance with section 72(t)(2)(A)(iv) for calendar years beginning with 2002, the calendar year following the calendar year of the divorce, will continue if Taxpayer reduces his monthly distribution from each IRA by approximately forty percent. Thus, with respect to your second ruling request, we conclude that the reduction in the monthly distribution from IRA's 1, 2, 3 and 4 to Taxpayer beginning in calendar year 2002 will not constitute a subsequent modification in his series of periodic payments, as the term "subsequent modification" is used in section 72(t)(4) of the Code and will not result in the imposition on Taxpayer of the ten percent additional income tax imposed by section 72(t)(1) pursuant to section 72(t)(4)(A).

With respect to your third ruling request, as noted above, section 72(t)(4)(A) provides for imposition of the additional ten percent tax plus interest when a series of periodic payments is substantially modified prior to the closing of the five year period beginning with the date of the first payment and prior to the date on which the recipient-taxpayer attains age 59 ½. In this case,

Taxpayer will attain age 59 ½ on November 30, 2007. Additionally, Taxpayer began receiving his series of periodic payments, which it has been represented are intended to comply with the requirements of section 72(t)(2)(A)(iv) of the Code, in August 1998 and the five year period will end with the month of July 2003. Thus, with respect to your third ruling request, the Service concludes that the Taxpayer may change the method of distribution and the amount thereof from his IRA's 1, 2, 3 and 4 at any time after November 2007 without imposition of the ten percent additional income tax plus interest by section 72(t)(4)(A) because of a subsequent modification of a series of substantially equal periodic payments.

This ruling letter is based on the assumption that IRA A meets the requirements of section 408(a) of the Code at all relevant times.

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

The original of this ruling letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of the ruling
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