



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

SEP 27 2005

TAX EXEMPT AND
GOVERNMENT ENTITIES

DIVISION

U.I.L. 0072.20-04

XXXXXXXXXX

XXXXXXXXXX

XXXXXXXXXX

LEGEND:

Taxpayer A = ***

IRA X = ***

IRA Y = ***

Company Z = ***

Dear ***:

This is in response to your letter dated December 23, 2004, supplemented by additional correspondence dated July 21, 2005 and September 26, 2005, submitted on your behalf by your authorized representative, in which you request a ruling as to whether the method of calculating distributions from your individual retirement arrangements (IRAs) constitute a series of substantially equal periodic payments that will not be subject to the 10 percent additional 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 is forty-seven years old. Taxpayer A maintains IRA X and IRA Y which are rollover IRAs she established with Company Z with distributions she received from her former employer's retirement plan. Company Z is the custodian of IRA X and IRA Y. Taxpayer A began receiving payments from IRA X and IRA Y in a series of substantially equal periodic payments on February 15, 2004 and October 27, 2004 respectively. Taxpayer A received these distributions using a methodology intended to produce a series of substantially equal periodic payments as described in Code section 72(t)(2)(A)(iv).

Taxpayer A used the fixed amortization method to calculate the series of substantially equal periodic payments from IRA X and IRA Y. Taxpayer A's distribution amount is determined each year by amortizing the IRA X and IRA Y account balances as of December 31 over Taxpayer A's life expectancy using a reasonable rate of interest. Taxpayer A's life expectancy is determined using the single life expectancy table contained in section 1.401(a)(9)-9, Q&A-1 of the Income Tax Regulations (regulations),

and an interest rate that is not more than 120 percent of the federal mid-term rate for either of the two months immediately preceding the month in which the distribution began. Taxpayer A proposes to recalculate the amount of the annual payment each year, however, the method by which the amount of the payment is determined for subsequent years will remain the same. For example, for each subsequent distribution year, Taxpayer A will recalculate the annual distribution for each succeeding year based on the account balances of IRA X and IRA Y as of December 31 of the prior year, determine her life expectancy as of her age in each distribution year using the single life table contained in section 1.401(a)(9)-9, Q&A-1 of the regulations, and 120 percent of the federal mid-term rate for either of the two months immediately preceding the month in which the distribution began.

Based on the foregoing, you request a ruling that the method used to determine periodic payments as described herein results in a series of substantially equal periodic payments under section 72(t)(2)(A)(iv) 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.

Section 1.401(a)(9)-9 of the regulations provides tables that are to be used in connection with computations under section 72 and the regulations thereunder. Included in this section are tables giving life expectancies for one life (Q&A-1) and joint life and last survivor expectancies for two lives (Q&A-3).

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). 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, 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 the 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 succeeding year.

Section 2.02 of Revenue Ruling 2002-62 contains rules that apply to each of the three methods of calculating a series of substantially equal periodic payments. Section 2.02 provides, in general, that payments will constitute a series of substantially equal periodic payments if the payments are determined by using: (a) the uniform lifetime table in Appendix A of Revenue Ruling 2002-62, the single life expectancy table in section 1.401(a)(9)-9, Q&A-1 of the regulations, or the joint and last survivor table in section 1.401(a)(9)-9, Q&A-3 of the regulations, (b) an interest rate that is not more than 120 percent of the federal mid-term rate, and (c) a reasonable manner of determining the account balance.

In this case Taxpayer A has determined the annual payments from IRA X and IRA Y in accordance with the fixed amortization method as described in section 2.01(b) of Revenue Ruling 2002-62, except that rather than making a fixed annual payment, Taxpayer A proposes to recalculate the amount of the annual payment each year. For subsequent years, Taxpayer A will recalculate the annual distribution for each succeeding year based on the IRA X and IRA Y account balances as of December 31 of the prior year, determine her life expectancy as of her age in each subsequent year using the single life table contained in section 1.401(a)(9)-9, Q&A-1 of the regulations, and an interest rate that is not more than 120 percent of the federal mid-term rate for either of the two months immediately preceding the month in which the distribution began.

The life expectancy and interest rate used are such that they do not result in the circumvention of the requirements of sections 72(t)(2)(A)(iv) and 72(t)(4) of the Code

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(through the use of an unreasonable high interest rate or an unreasonable life expectancy).

Accordingly, the method (as modified) of determining periodic payments results in substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code, and such payments will not be subject to the additional tax of section 72(t) unless the requirements of section 72(t)(4) are not met.

This ruling assumes that IRA X and IRA Y satisfy the requirements of Code section 408 at all times relevant to the transaction.

This 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 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 at ***.

Sincerely,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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