200628029

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 17 2006

Uniform Index List 72-20-04

T:EP:RA:T2

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

LEGEND:

Taxpayer A = ***

Company M = ***

IRA X = ***

IRA Y = ***

IRA Z = ***

Company N = ***

Company O = ***

Company P = ***

Amount Q = ***

Amount R = ***

Company S = ***

Amount T = ***

Amount U = ***

Amount V = ***

Amount B = ***

Amount C = ***

Amount D = ***

Individual E = ***

Individual F = ***

Account G = ***

Bank R = ***

Amount H = ***

Amount I = ***

Amount W = ***

Amount J = ***

Amount K = ***

Amount L = ***

Dear ***:

This is in response to your letter dated October 3, 2005, supplemented by additional correspondence dated March 27, 2006, March 30, 2006, and April 10, 2006, submitted by your authorized representative in which you request a ruling as to whether distributions made from two individual retirement arrangements (IRAs), inadvertently made in amounts different from the scheduled distributions and whether an offsetting adjustment made during the year to correct the error, will not result in a modification to a series of substantially equal periodic payments you are receiving and, therefore, will not be subject to the additional 10 percent 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 was an employee of Company M. Under Company M's qualified plan, employees with certain seniority could elect to roll over a portion of their qualified plan accumulations to their IRAs. Taxpayer A made that election in 1998.

In June 1998, at the age of 41, Taxpayer A established IRA Y with Company N, as custodian, and rolled Amount H from Company M's qualified plan to IRA Y. In July 1998, Taxpayer A rolled over Amount W from IRA Y to IRA X, which was also maintained by Company N. In August 1999, through custodial transfer, IRA X became maintained by Company S. On December 15, 2003, through custodial transfer, Company O, acting through Taxpayer A's broker, Company P, became the custodian of IRA X.

Company O, acting through Taxpayer A's broker, Company P, became the custodian of IRA X.

Taxpayer A received annual distributions from IRA X in the form of a series of substantially equal periodic payments calculated under the fixed annuitization method. Taxpayer A is required to withdraw an aggregate amount, Amount Q, from IRA X. The distributions from IRA X began on July 23, 1998 and were intended to comply with the requirements of section 72(t)(2)(A)(iv) of the Code. Taxpayer A's series of substantially equal periodic payments were made monthly in the amount of Amount R, with estimated taxes being paid to the Service in the amount of Amount K, making Taxpayer A's net distribution received in the amount of Amount L per month. Distributions from IRA X are directly deposited into Account G, Taxpayer A's checking account maintained at Bank B.

In 2000, Taxpayer A established IRA Z with Company S as custodian and rolled over Amount I from IRA Y to IRA Z. On December 15, 2003, through custodial transfer, Company O, acting through Taxpayer A's broker, Company P, became the custodian of IRA Z.

Taxpayer A received annual distributions from IRA Z in the form of a series of substantially equal periodic payments calculated under the fixed annuitization method. Taxpayer A is required to annually withdraw an aggregate amount, Amount T, from IRA Z. The distributions from IRA Z began on January 4, 2000 and were intended to comply with the requirements of section 72(t)(2)(A)(iv) of the Code. Taxpayer A's series of substantially equal periodic payments were made monthly in the amount of Amount U, with estimated taxes being paid to the Service in the amount of Amount B per month, making Taxpayer A's net distribution received in the amount of Amount V per month. Distributions from IRA Z are directly deposited into Account G.

Under IRA X, the annual distributions are Amount Q. Under IRA Z, the annual distributions are Amount T.

On October 5, 2004 and November 9, 2004, Individual F, Company P's office manager, instructed Company O to distribute from IRA X, in addition to the amounts properly distributable (Amount R per month), the sum of Amount V, which was the proper monthly distribution from IRA Z, less the estimated taxes sent to the Service (Amount B). Taxpayer A's distribution of Amount V from IRA Z was not made in October and November 2004. The estimated tax distributions of Amount B were correctly distributed from IRA Z for October and November 2004 and were paid to the Service.

Taxpayer A called Individual E in November 2004 to inquire about the additional distributions from IRA X that were made in October and November. Individual E discovered the error made while reviewing the records. In December 2004 Individual B and Taxpayer A met to discuss this issue, among others. Individual E told Taxpayer A that Company P would look into the matter further. Taxpayer A represents that Individual E, without consulting anyone or informing Taxpayer A, instructed Individual F

to cause Company O to make a corrective/offsetting transfer of Amount C from IRA Z to IRA X on December 31, 2004.

Taxpayer A received calendar year 2004 Forms 1099-R for IRA X and IRA Z towards the end of January 2005. Form 1099-R for IRA X reports a gross distribution of Amount J (Amount C more than the correct distribution amount of Amount Q). Form 1099-R for IRA Z reports a gross distribution of Amount D (Amount C less than the correct distribution amount of Amount T).

Taxpayer A did not learn about the corrective/offsetting transfer of Amount C from IRA Z to IRA X until after he met with counsel on or about June 17, 2005.

Based on the foregoing, Taxpayer A requests the following rulings:

1. That the two erroneous monthly distributions of Amount V from IRA X (and the two months of no distributions to Taxpayer A from IRA Z in calendar year 2004), will not be considered a modification to a series of substantially equal periodic payments with respect to either IRA X or IRA Z under Code section 72(t)(4) that will result in the imposition of the 10 percent additional tax under Code section 72(t)(1) for either IRA X or IRA Z.

2. That the corrective/offsetting transfer of Amount C, made on December 31, 2004, from IRA Z to IRA X will not be considered a modification to a series of substantially equal periodic payments with respect to either IRA X or IRA Z under Code section 72(t)(4) that will result in the imposition of the 10 percent additional tax under Code section 72(t)(1) for either IRA X or IRA Z.

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 or before the close of the 5-year period beginning with the date of the first payment and after 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 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). 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 annuitization method provides that the annual payment for each year is determined by dividing the account balance by an annuity factor that is the present value of an annuity of one dollar ($1) per year beginning at the taxpayer's age and continuing for the life of the taxpayer (or the joint lives of the individual and beneficiary). The annuity factor is derived using the mortality table in Appendix B of Rev. Rul. 2002-62 and using the chosen interest rate. Under this method, the account balance, the annuity factor, the chosen interest rate 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.

In this case Taxpayer A states that he began receiving payments from IRA X in calendar year 1998, and from IRA Z in calendar year 2000, in a series of substantially equal periodic payments as described in section 72(t)(2)(A)(iv) of the Code using the fixed annuitization method. Taxpayer A further states that the annual payment from IRA X is Amount Q and the annual payment from IRA Z is Amount T, as determined under the above methodology. In October and November 2004, Company O, as instructed by Individual F at Company P, distributed Amount V from IRA X when it should have been distributed from IRA Z. As a result, no distributions of Amount V were made from IRA Z for those two months.

When Taxpayer A discovered the error in November 2004, he brought it to the attention of Individual E at Company P. After meeting with Taxpayer A in December 2004, Individual E informed Taxpayer A that he would look at the matter further. However,

unbeknownst to Taxpayer A, Individual E had Individual F instruct Company O to make a corrective/offsetting transfer of Amount C from IRA Z to IRA X. Taxpayer A was not made aware of the corrective/offsetting transfer until June 17, 2005, when Individual E sent Taxpayer A's counsel a summary of the transactions at issue via electronic mail.

If Amount V had been distributed from IRA Z rather than from IRA X in October and November 2004 as Taxpayer A had established with Company O, there would have been no need to make a corrective/offsetting transfer from IRA Z to IRA X in December 2004.

In this case, Taxpayer A did all he could in order to ensure that he continued to receive Amount Q from IRA X and Amount T from IRA Z, and had no reason to believe Company O would make a distributions of Amount V for October and November 2004 from IRA X rather than from IRA Z. Nor did Taxpayer A have any knowledge that Company P would instruct Company O to make a corrective/offsetting transfer from IRA Z to IRA X in December 2004. Rather, the modification is due to the failure of Company O to distribute Amount V from IRA Z instead of IRA X in October and November 2004 and the subsequent corrective/offsetting transfer of Amount C from IRA Z to IRA X in December 2004.

Based on the foregoing, we conclude that the error made by Company O in distributing Amount F from IRA X, rather than from IRA Z, In October and November 2004 and the subsequent corrective/offsetting transfer from IRA Z to IRA X will not be considered a modification of a series of substantially equal periodic payments from IRA X and IRA Z under Code section 72(t)(2)(A)(iv) that would result in an imposition of the 10 percent additional tax imposed on premature 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 periodic payments received from IRA X and IRA Z satisfied Code section 72(t)(2)(A)(iv) and Rev. Rul. 2002-62. This ruling assumes that IRA X and IRA Z meet the requirements of Code section 408(a) at all time relevant to this 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