



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200631025

MAY 12 2006

Uniform Index List 72-20-04

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

T:EP:RA:TZ

LEGEND:

Taxpayer A = ***
IRA X = ***
IRA Y = ***
IRA Z = ***
Company M = ***
Amount N = ***
Amount O = ***
Amount P = ***
Individual B = ***
Company C = ***
Company D = ***
Amount E = ***
Amount F = ***
Amount G = ***
Amount H = ***
Amount I = ***
Amount J = ***

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Amount K = ***

Amount L = ***

Amount Q = ***

Dear ***:

This is in response to your letter dated _____ supplemented by additional information dated _____ and May 10, 2006 submitted by your authorized representative in which you request a ruling as to whether distributions made from individual retirement arrangements (IRAs), inadvertently made in amounts different from the scheduled distributions, 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 maintained IRA X, a rollover IRA he established on May 8, 1996 with Company M with funds in the amount of Amount N.

Taxpayer A received annual distributions from IRA X in the form of a series of substantially equal periodic payments under the fixed annuitization method. Taxpayer A was required to annually withdraw an aggregate amount, Amount O, from IRA X. The distributions from IRA X began on March 28, 1997 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 P.

Taxpayer A met with his investment advisor, Individual B of Company C, in June 2003. Based upon the advice of Individual B, Taxpayer A changed the method of determining distributions from IRA X from the fixed annuitization method to the required minimum distribution method, pursuant to Revenue Ruling 2002-62, 2002-42 I.R.B. 710, section 2.03(b), effective June 15, 2003. For the remainder of 2003, using the required minimum distribution method, Taxpayer A was required to withdraw Amount K from IRA X.

Taxpayer A met with Individual B in _____ to discuss an additional investment alternative, which involved rolling over the funds in IRA X to a new custodian, Company D. Based upon Individual B's advice, Taxpayer A authorized the rollover of IRA X with Company M to IRA Y with Company D. However, Company M only rolled over a portion of the IRA X funds to IRA Y with Company D. When the additional IRA X funds were received by Company D, IRA Y was closed and IRA Z was opened with all of the IRA X funds placed in IRA Z. This transaction was completed in or about _____ The distributions from IRA Z (formerly IRA Y) began in _____

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Taxpayer A represents that as part of the rollover of IRA X with Company M to IRA Z (formerly IRA Y) with Company D, Individual B did not complete the proper form(s) to instruct Company D to continue the distributions from IRA Z using the required minimum distribution method.

In March 2004, Taxpayer A's income tax preparer inquired about the distributions from IRA Z (formerly IRA Y) that were made for the year 2003. Individual B investigated the inquiry, at which time he discovered that the proper form(s) were not completed in order to continue distributions from IRA Z (formerly IRA Y) based on the required minimum distribution method. As a result, the distributions made to Taxpayer A from IRA Z (formerly IRA Y) were not based on the required minimum distribution method as selected by Taxpayer A.

Taxpayer A represents that Individual B completed the proper form(s) upon discovering this error and had them delivered to Company D.

For the year 2003, Taxpayer A received Amount E more than should have been distributed from IRAY and IRA Z using the required minimum distribution method. For the period of _____ Taxpayer A received Amount F more than should have been distributed from IRA Z using the required minimum distribution method.

Total distributions from IRA X from _____ through September 30, 2003 were approximately Amount L. Total distributions IRA Z (formerly IRA Y) from October 1, 2003 through July 31, 2004 were Amount G. Total distributions from IRA Z from July 31, 2004 through December 31, 2004 were Amount H.

Taxpayer A's _____ Form 1099-R reported distributions from IRA Y for Amount I and IRA Z for Amount Q as being subject to the additional tax set forth in section 72(t)(1) of the Code. Taxpayer A paid the additional tax for _____ Taxpayer A's _____ Form 1099-R reported approximately Amount J of IRA Z distributions being subject to the additional tax set for the in section 72(t)(1) of the Code. Taxpayer A will pay the additional tax for 2004.

Taxpayer A reached the age of . . .

Based on the foregoing, Taxpayer A requests a ruling that the excess amounts received from IRA Z (formerly IRA X and IRA Y) from October 2003 through July 2004 because of a failure to make the series of substantially equal periodic payments under the required minimum distribution method, as selected by Taxpayer A, will not be considered a modification to a series of substantially equal periodic payments that would result in the imposition of the 10 percent additional tax under section 72(t)(4) of the Code to the amounts distributed from IRA Z (formerly IRA X and IRA Y).

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.

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.

Pursuant to Revenue Ruling 2002-62, 2002-42 I.R.B. 710, section 2.03(b), an individual who begins 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 A states that he began receiving payments from IRA X, in calendar year 1997, 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 as described in Notice 89-25. Taxpayer A further states that the annual payment from IRA X as determined under the above methodology was Amount O. In _____ based upon section 2.03(b) of Rev. Rul. 2002-62, Taxpayer A changed from the fixed annuitization method to the required minimum distribution method. Taxpayer A represents that for the year 2003, Taxpayer A received Amount E more than should have been distributed from IRA Z (formerly IRA X and IRA Y) using the required minimum distribution method.

Taxpayer A states that the rollover of IRA X with Company M to IRA Z (formerly IRA Y) with Company D was completed in _____. However, Individual B did not complete the proper forms instructing Company D to continue the distributions from IRA Z using the required minimum distribution method. As a result, the distributions from IRA Z (formerly IRA Y) were based on a defined withdrawal amount given the Company D contract's 6 percent Guaranteed Minimum Benefit option rather than the required minimum distribution method.

If the proper forms had been completed instructing Company D to continue Taxpayer A's IRA Z (formerly IRA Y) distributions using the required minimum distribution method, then Taxpayer A would not be faced with the resulting modification.

In this case, Taxpayer A did all he could in order to ensure that he continued to receive the correct required minimum distribution amount from IRA Z and had no reason to believe that the distributions from IRA Z would not continue to be based upon the required minimum distribution method as he requested in _____. Taxpayer A did not intend to modify the series of substantially equal periodic payments he began receiving from IRA X (and subsequently IRA Y and IRA Z) in 1997. Rather, the modification is due to

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the failure of Individual B of Company C to complete the proper Company D paperwork to ensure that distributions from IRA Z were calculated using the required minimum distribution method.

Based on the foregoing, we conclude that the excess amounts received from IRA Z (formerly IRA X and IRA Y) from October 2003 through July 2004 because of a failure to make the series of substantially equal periodic payments under the required minimum distribution method, as selected by Taxpayer A, will not be considered a modification to a series of substantially equal periodic payments that will result in the imposition of the 10 percent additional tax under section 72(t)(4) of the Code to the amounts distributed from IRA Z (formerly IRA X and IRA Y).

This ruling does not express an opinion as to whether (but assumes that) the series of substantially equal periodic payments from IRA X and subsequently from IRA Y and IRA Z satisfied Code section 72(t)(2)(A)(iv) and Rev. Rul. 2002-62. This ruling assumes that IRA Z (formerly IRA X and IRA U) meets the requirements of section 408 of the Code at all times 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