

200717026



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 01 2007

U.I.L. 72-20-04

TIER:RA:T2

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

Company C =

Amount D =

Amount E =

Amount F =

Amount G =

County L =

State M =

Dear :

This is in response to a letter dated November 2, 2006, as supplemented by correspondence dated January 10, 2007, January 29, 2007, and January 30, 2007, submitted on your behalf by your authorized representative, in which you ask whether a distribution from your individual retirement arrangement to your former spouse is considered a modification to a series of substantially equal periodic payments within the meaning of section 72(t)(4) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted on your behalf.

Taxpayer A began taking a series of periodic payments from an individual retirement arrangement (IRA X) he maintains with Company C. Taxpayer A was 53 years old when the series of payments from IRA commenced and will attain age 59 ½ on August 1, 2008. Taxpayer A elected to have distributions from IRA X commence in a series of substantially equal periodic payments as described in Q&A-12 of Revenue Ruling 2002-62, 2002-42 I.R.B. 710. Specifically, Taxpayer A used the fixed annuitization method to determine the annual distributions from IRA X. The distributions from IRA X began on December 27, 2002 and were intended to comply with the requirements of section 72(t)(2)(A)(iv) of the Code. The annual distribution from IRA X is Amount E. Taxpayer A's series of substantially equal periodic payments are made on a monthly basis in the amount of Amount G. Taxpayer A received distributions from IRA X on a monthly basis in the amount of Amount G from 2002-2006.

On _____ a petition for divorce in the Circuit Court of County L was filed asking for dissolution of Taxpayer A and Taxpayer B's marriage. On _____ a Marital Settlement Agreement was signed by Taxpayer A and Taxpayer B. On _____ a Judgment of Divorce was granted to Taxpayer A and Taxpayer B. The Judgment of Divorce included a division of Taxpayer A and Taxpayer B's property, including IRA X. The Marital Settlement Agreement and Judgment of Divorce require that Taxpayer B is granted 50 percent of the value of IRA X.

As of the end of December 2006, IRA X had a balance of Amount D. Pursuant to the Marital Settlement Agreement and Judgment of Divorce, 50 percent (approximately Amount F) of the value of IRA X is awarded to Taxpayer B. The Judgment of Divorce states that Taxpayer A and Taxpayer B shall execute those documents which are necessary to effectuate the transfers of property provided herein. It is represented that the State M Circuit Court's Judgment of Divorce is a "divorce or separation instrument" as described in Code section 71(b)(2)(A) in Code section 408(d)(6).

As a result of the proposed transfer of 50 percent of the value of IRA X to Taxpayer B, the account balance of IRA X will be approximately Amount F. Using an account balance of Amount F on which to calculate his series of substantially equal periodic payments for calendar year 2007 would result in a distribution of an amount less than the amount determined when Taxpayer A commenced receiving his periodic payments from IRA X. Taxpayer A intends to use the same fixed annuitization methodology to calculate his future payments from IRA X.

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

1. The proposed division of IRA X and the proposed transfer of approximately Amount F from IRA X to Taxpayer B pursuant to a State M Judgment of Divorce will be considered a nontaxable transfer under Code section 408(d)(6).
2. The reduction in the monthly distribution from IRA X to Taxpayer A beginning in the month of the Judgment of Divorce, prior to Taxpayer A attaining age 59 ½, will not constitute a modification to a series of substantially equal periodic payments from IRA X 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 IRA X.

Section 408(d)(1) of the Code provides that, 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) of the Code 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 of 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 the close of the five-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.

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 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 owner. Thereafter such transferred interest is to be treated as maintained for the benefit of the former spouse.

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 under 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 85-25 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, modified 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 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 (\$1) dollar 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 Revenue Ruling 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 commenced receiving a series of substantially equal periodic payments from IRA X in 2002 based on an account balance of Amount D. In 2007, in satisfaction of the terms of the Judgment of Divorce which were finalized on approximately fifty (50) percent of the value of IRA X is awarded to Taxpayer B and will be transferred to an account in her own name. Pursuant to section 408(d)(6) of the Code, the proposed transfer of approximately Amount F from IRA X to Taxpayer B in 2007 pursuant to the Judgment of Divorce, is considered to be a nontaxable transfer from IRA X by Taxpayer A and the 50 percent of the IRA X account balance that will be transferred ceases to be the property of Taxpayer A's IRA X at the time of the proposed transfer and can no longer be used to calculate Taxpayer A's subsequent payments from IRA X beginning with calendar year 2007. The

proposed transfer will reduce the IRA X account balance by approximately fifty percent, which means that the IRA X account balance on which Taxpayer A will use to calculate his subsequent payments, using the same methodology, for the series of payments beginning in 2007 will produce an annual distribution that is less than the amount calculated when he commenced to receive the series of substantially equal periodic payments from IRA X.

In view of the foregoing, we conclude that the proposed division of IRA X and the transfer of approximately Amount F from IRA X to Taxpayer B pursuant to a State M Judgment of Divorce will be considered a nontaxable transfer under Code section 408(d)(6). We also conclude that the reduction in the monthly distribution from IRA X to Taxpayer A beginning in the month of the Judgment of Divorce, prior to Taxpayer A attaining age 59 ½, will not constitute a modification to a series of substantially equal periodic payments from IRA X under Code section 72(t) that will result in the imposition of the 10 percent additional tax under Code section 72(t) for IRA X.

This ruling does not express an opinion as to whether (but assumes that) the series of substantially equal periodic payments received from IRA X satisfy Code section 72(t)(2)(A)(iv) and Revenue Ruling 2002-62. This ruling also assumes that IRA X satisfies the requirements of Code section 408(a) at all times relevant to this transaction.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is addressed only to the taxpayer who requested it. Section 6110(k)(2) of the Code provides that it may not be used or cited as precedent.

If you have any questions about this ruling, please contact SE:T:EP:RA:T2.

Sincerely yours,
(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted Copy of Letter Ruling
Notice of Intention to Disclose