



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201011036

DEC 14 2009

Uniform Issue List: 72.00-00

SE:TEP:RA:T2

Legend:

Taxpayer A = *****
IRA X = *****

Dear *****:

This is in response to your ruling request dated October 14, 2009, from your authorized representative in which you request a ruling on whether the 10 percent additional income tax contained in section 72(t)(1) of the Internal Revenue Code (the "Code") applies to withdrawals from your Individual Retirement Arrangement.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, an employee of an investment counseling firm for 15 years, was diagnosed with multiple sclerosis in 1996. In May 2002, symptoms from the disease forced him to leave his position and apply for Social Security disability benefits. In January 2004, he was granted disability benefits from the Social Security Administration. Taxpayer A's disability continues to this time. Taxpayer A is below 59.5 years of age, and he wishes to withdraw unequal, non-periodic payments from IRA X before he reaches age 59.5.

Based on the above facts and representations, you request a ruling that the 10 percent additional tax contained in section 72(t)(1) of the Code will not apply to Taxpayer A with respect to the distributions taken from IRA X.

Section 72 of the Code imposes an additional income tax on certain early distributions from qualified retirement plans, including IRAs. The tax is generally equal to 10 percent of the amount includable in gross income.

Section 72(t)(2) of the Code provides that the additional tax does not apply to certain distributions, including distributions attributable to the employees being disabled within the meaning of section 72(m)(7) and 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 the joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Section 72(m)(7) of the Code provides that an individual shall be considered to be disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long continued and indefinite duration.

Treasury Regulation section 1.72-17(f)(2)(viii) states that whether or not the impairment of in a particular case constitutes a disability is to be determined with reference to all the facts in the case. An example of an impairment which would ordinarily be considered as preventing substantial gainful activity includes certain progressive diseases which have resulted in the physical loss or atrophy of a limb, such as multiple sclerosis.

In this case, Taxpayer A has demonstrated that he has multiple sclerosis and is unable to engage in any substantial gainful activity by reason of this physical impairment. Further, based on the documentation submitted in support of the ruling request, it does not appear that Taxpayer A can be expected to recover from this physical impairment in the foreseeable future.

Accordingly, we rule that Taxpayer A meets the requirements of section 72(t)(2)(iii) of the Code, and therefore the 10 percent additional income tax imposed by section 72(t)(1) of the Code will not apply to the withdrawal of funds by Taxpayer A from IRA X in unequal, nonperiodic payments prior to his attaining age 59 ½.

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 directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ***** (I.D. Number *****) by phone at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,

Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose

cc: *****

