



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201030038

MAY 05 2010

Uniform Issue List: 72.20-04

SE:T:EP:RA:TI

Legend

Taxpayer A = *****

Taxpayer B = *****

IRA X = *****

Company C = *****

Amount E = \$*****

Amount G = \$*****

Percent H = *****

County L = *****

State M = *****

Dear *****:

This is in response to a letter dated ***** , as supplemented by communication dated ***** , 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.

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Taxpayer A began taking a series of periodic payments from an individual retirement arrangement (IRA X) she maintains with Company C. Taxpayer A will attain age 59 1/2 on *****. Taxpayer A elected to have distributions from IRA X commence in a series of substantially equal periodic payments as described in Section 2 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 ***** , 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 **** through ****. Taxpayer A will continue to receive the same distribution of Amount G until the division of IRA X.

On ***** , a judgment of divorce was granted to Taxpayer A and Taxpayer B by Final Decree of the Family Court of State M in and for County L ("Final Decree"). A property settlement agreement was entered into by Taxpayer A and Taxpayer B, the terms of which are contained in a Marital Stipulation Agreement and Order in County L, State M dated ***** ("Stipulation Agreement"). The Stipulation Agreement included a division of Taxpayer A and Taxpayer B's property, including IRA X. The Stipulation Agreement requires that Taxpayer B is granted a portion of the value of IRA X, and also provides Taxpayer A the right to request a private letter ruling from the Internal Revenue Service in order to avoid a penalty.

Taxpayer A shall keep the first \$xxx,xxx of the value of IRA X plus Percent H of the value in excess of \$xxx,xxx. However, any gross distributions made to Taxpayer A between ***** and the actual division of IRA X will be attributed to Taxpayer A. Pursuant to the Stipulation Agreement, a portion of the value of IRA X is awarded to Taxpayer A pursuant to the following formula: $(\text{Percent H}) [(\text{balance at date of division of IRA X}) - \$xxx,xxx - (\text{Amount G})(\text{number of months between ***** through the month containing the date of the actual division of IRA X})] + \xxx,xxx . The balance of IRA X will be transferred to Taxpayer B. It is represented that the Stipulation Agreement and Order is a "divorce or separation instrument" within the meaning of Code section 408(d)(6) and as described in Code section 71(b)(2)(A).

As a result of the proposed transfer of a portion of the value of IRA X to Taxpayer B, the account balance of IRA X will be reduced accordingly. Using this reduced account balance on which to calculate her series of substantially equal periodic payments would result in a distribution of an amount less than the amount determined when Taxpayer A commenced receiving her periodic payments from IRA X. Taxpayer A intends to use the same fixed annuitization methodology to calculate her 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 a certain portion from IRA X to Taxpayer B pursuant to the Stipulation Agreement will be considered a nontaxable transfer under Code section 408(d)(6).

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2. The reduction in the monthly distribution from IRA X to Taxpayer A beginning in the month following the month of division of IRA X, prior to Taxpayer A attaining age 59 1/2, 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 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 1/2 or the close of the five-year period beginning with the date of the first payment and after the employee attains age 59 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 408(d)(6) of the Code provides that an individual's IRA interest transferred to a spouse or former spouse 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 such spouse and not of the original IRA owner. Thereafter such transferred interest is to be treated as maintained for the benefit of such 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 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, 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 ****. In satisfaction of the terms of the Stipulation Agreement which was finalized on *****, a portion of the value of IRA X is awarded to Taxpayer B and will be transferred to an individual retirement account in his own name. Pursuant to section 408(d)(6) of the Code, the proposed transfer from IRA X to Taxpayer B pursuant to the Stipulation Agreement, is considered to be a nontaxable transfer from IRA X by Taxpayer A and the portion 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. The proposed transfer will reduce the IRA X account balance, which means that the IRA X account balance on which Taxpayer A will use to calculate her subsequent payments, using the same methodology, for the series of payments beginning in **** in the month following the month of division of IRA X, will produce an annual distribution that is less than the amount calculated when she 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 a certain portion from IRA X to Taxpayer B pursuant to the Stipulation Agreement 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 following the month of division of IRA X, prior to Taxpayer A attaining age 59 1/2, 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.

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

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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.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you have any questions about this ruling, please contact ***** (Identification Number *****) at (***) ***-****. Please address all correspondence to *****.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Letter Ruling
Notice of Intention to Disclose