



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201051025

SEP 30 2010

**Uniform Issue List: 72.00-00; 72.20-00; 72.20-04**

SE: T: EP: RA: T2

**Legend:**

Taxpayer A: \* \* \*

IRA X: \* \* \*

Financial Institution A: \* \* \*

Custodian A: \* \* \*

Date 1: \* \* \*

Date 2: \* \* \*

Date 3: \* \* \*

Date 4: \* \* \*

Date 5: \* \* \*

Amount 1: \* \* \*

Amount 2: \* \* \*

Amount 3: \* \* \*

Amount 4: \* \* \*

Amount 5: \* \* \*

Amount 6: \* \* \*

Amount 7: \* \* \*

Amount 8: \* \* \*

Year 1: \* \* \*

Year 2: \* \* \*

Year 3: \* \* \*

Year 4: \* \* \*

Year 5: \* \* \*

Year 6: \* \* \*

Year 7: \* \* \*

Month 1: \* \* \*

Month 2: \* \* \*

Month 3: \* \* \*

Month 4: \* \* \*

Month 5: \* \* \*

Month 6: \* \* \*

Month 7: \* \* \*

Month 12: \* \* \*

Fund A: \* \* \*

Fund B: \* \* \*

201051025

Dear \* \* \*:

This is in response to your letter dated April 1, 2010, as supplemented by your two pieces of correspondence dated July 1, 2010 and your correspondence August 1, 2010, and August 1, 2010, submitted on your behalf by your authorized representative requesting (i) a ruling that the failure to distribute the entire required distribution amount for Year 6, and a proposed makeup distribution for Year 7 will not be considered a modification of a series of substantially equal periodic payments and will not be subject to the 10 percent additional tax imposed on premature distributions under section 72(t)(1) of the Internal Revenue Code (Code), and (ii) a ruling that the fact that the amount of the annual payment computed pursuant to section 72(t)(2)(A)(iv) of the Code was paid in a single sum in Year 1 and in monthly distributions in Year 2 through Year 7 will not be considered a modification of a series of periodic payments and will not be subject to the 10 percent additional tax imposed on premature distributions under section 72(t)(1) of the Code.

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

Taxpayer A, under age 59 ½, owns IRA X. In Month 12 of Year 1, Taxpayer A established an arrangement with Custodian A, the custodian holding IRA X, under which Taxpayer A would receive IRA X distributions in the form of substantially equal periodic payments intended to comply with section 72(t)(2)(a)(A)(iv) of the Code. Taxpayer represents that the annual amount of each distribution calculated using the fixed amortization method, is Amount 1. Taxpayer directed Custodian A to distribute Amount 1 in a single sum in Year 1 and in equal monthly installments of Amount 2 thereafter.

On Date 1, Amount 1 was distributed from IRA X for Year 1. Prior to Date 2, Taxpayer A discovered that Custodian A distributed Amount 3 from IRA X for Month 1 of Year 2, instead of Amount 2. On Date 2, Taxpayer A sent a letter to Financial Institution A, the investment company through which IRA X was established regarding the error. Taxpayer A directed Financial Institution A to make a corrective distribution from IRA X in the amount of Amount 4 to make up for the shortage in Month 1 of Year 2. Custodian A again distributed Amount 3 instead of Amount 2 from IRA X in Month 2 of Year 2. On Date 3, Custodian A made a corrective distribution of Amount 5 for Months 1 and 2 of Year 2.

Subsequent monthly distributions in the amount of Amount 2 were made from IRA X from Month 3 of Year 2 through Month 4 of Year 6.

In Month 5 of Year 6, IRA X consisted of several investment funds, including Funds A and B. Prior to Date 4, Taxpayer directed Financial Institution A by phone to distribute Amount 6 from Fund A and Amount 7 from Fund B, and to make all future distributions from Fund B. Custodian A made the requested

distributions from the respective funds on Date 4 and sent Taxpayer A a form to change the funding source for subsequent distributions. Taxpayer A completed a new form in which he directed Custodian A to distribute all future amounts from Fund B and returned the form to Financial Institution A on Date 5. Custodian A resumed monthly distributions of Amount 2 from IRA X in Month 7 of Year 6. Custodian A made 5 additional distributions from IRA X during Year 6, for a total of 11 monthly distributions of Amount 2 for Year 6, instead of 12.

Taxpayer represents that he first learned that Custodian A distributed 11 monthly payments of Amount 2 for Year 6 when he reviewed the Form 1099-R from Custodian A for Year 6 in Month 3 of Year 7 in connection with the preparation of his income tax return for Year 6. The Form 1099-R for Year 6 shows an annual distribution of Amount 8 from IRA X, representing 11 monthly payments of Amount 2, instead of Amount 1, which would represent 12 monthly payments of Amount 1.

Based on the foregoing, Taxpayer requests the following rulings:

1. The failure to distribute the entire required distribution amount for Year 6, and a proposed makeup distribution for Year 7 will not be considered a modification of a series of substantially equal periodic payments and will not be subject to the 10 percent additional tax imposed on premature distributions under section 72(t)(1) of the Code.
2. The fact that the amount of the annual payment computed pursuant to section 72(t)(2)(A)(iv) of the Code was paid in a single sum in Year 1 and in monthly distributions in Year 2 through Year 7 will not be considered a modification of a series of periodic payments and will not be subject to the 10 percent additional tax imposed on premature distributions under section 72(t)(1) of the Code.

Section 72(t)(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 distribute, as the case may be, in the manner provided under section 72.

Code 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.

Code section 72(t)(2)(A)(iv) 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.

Code section 72(t)(4) 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 employee's attainment of 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 1.401(a)(9)-9 of the regulations provides tables that are to be used in connection with computations under section 72 and the regulations thereunder. Included in this section are tables giving life expectancies for one life (Q&A-1) and joint life and last survivor expectancies for two lives (Q&A-3).

Notice 89-25, 1989-1 I.R.B. 68 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. In the absence of regulations on Code section 72(t), this notice provides guidance with respect to the exception to the tax on premature distributions provided under section 72(t)(2)(A)(iv). Q&A 12 of Notice 89-25 provides three methods of determining substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv).

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. Rev. Rul. 2002-62 provides, among other things, that payments are considered to be substantially equal periodic payments within the meaning of Code 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 amortization method provides that the annual payment for each year is determined by amortizing in level amounts the account balance over a specified number of years determined using the chosen life expectancy table and the chosen interest rate. Under this method, the account balance, the number from the chosen life expectancy table 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.

Section 2.02(e) of Revenue Ruling 2002-62 provides in part, that under all three methods, substantially equal periodic payments are calculated with respect to an account balance as of the first applicable valuation date. Thus, a modification to the series of payments will occur if, after such date, there is (i) any addition to the account balance other than gains or losses, (ii) any nontaxable transfer of a portion of the account balance to another retirement plan, or (iii) a rollover by the taxpayer of the amount received resulting in such amount not being taxable.

201051025

Taxpayer A submitted documentation showing that he directed Custodian A to distribute 12 monthly payments of Amount 2 each calendar year. Taxpayer A represents that Custodian A's failure to make the 12 scheduled payments in Year 6 caused him to receive a distribution from IRA X for Year 6 that was less than the amount determined under the method he chose to commence receiving payments from IRA X. He further represents that he did not intend to modify the series of substantially equal periodic payments in Year 6, and had no reason to believe that Custodian A would not distribute Amount 1 in Year 6 because they had done so in each of the previous years, following their correction of the distribution errors during the early part of Year 2.

Taxpayer A represents that the error was not detected until he received his 1099-R from Custodian A in Year 7. Taxpayer proposes to receive a "make-up" distribution in Year 7 of Amount 2 that would satisfy his annual payment distribution requirement for Year 6 as determined under the fixed amortization method. When this amount is added to the amount calculated for Year 7, Taxpayer A will receive an amount for Year 7 that will be more than the annual payment determined under the fixed amortization method. Other than this "make-up" distribution which will be made in Year 7, Taxpayer A will continue to use the fixed amortization method for calculating the annual payments from IRA X.

Based on the foregoing, with respect ruling one, we conclude that the failure to distribute the entire required annual payment from IRA X for Year 6 and the subsequent "make-up" distribution of Amount 2 for Year 6 that will be made in Year 7 will not be considered a modification of a series of substantially equal periodic payments under section 72(t)(4) of the Code and, therefore will not be subject to the 10 percent additional tax on premature distributions under section 72(t)(1) of the Code.

With respect to ruling two, we conclude that the fact that the amount of the annual payment computed pursuant to section 72(t)(2)(A)(iv) of the Code was paid in a single sum in Year 1 and in monthly distributions in Year 2 through Year 7 will not be considered a modification of a series of substantially equal periodic payments under section 72(t)(4) of the Code, and will not be subject to the 10 percent additional tax imposed on premature distributions under section 72(t)(1) of the Code, provided that the total amount of the monthly distributions in any calendar year is equal to the amount of the annual payment for that calendar year computed pursuant to section 72(t)(2)(A)(iv) of the Code.

The ruling assumes that IRA X is an IRA within the meaning of Code section 408 at all relevant times.

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.

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

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.

If you wish to inquire about this ruling, please contact \* \* \*, I.D. \* \* \*, at \* \* \*.

Sincerely yours,



Donzell H. Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

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

cc. \* \* \*