



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

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**Uniform Issue List: 72.20-04**

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SE: T. EP. RA: TZ

Legend:

- Taxpayer A = \*\*\*\*\*
- IRA X = \*\*\*\*\*
- Financial Institution A = \*\*\*\*\*
- Financial Institution B = \*\*\*\*\*
- Amount 1 = \*\*\*\*\*
- Date 1 = \*\*\*\*\*
- Date 2 = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your request dated September 3, 2010 in which you request a ruling that the additional distribution from IRA X 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 ("the Code").

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

Taxpayer A, age 50, represents that she received a duplicate distribution totaling Amount 1 from IRA X, an Individual Retirement Annuity. Taxpayer asserts that the

additional distribution was due to a mistake made by Financial Institution B; Taxpayer further represents that Amount 1 has not been used for any other purpose.

Taxpayer A has been receiving monthly distributions from IRA X in the form of substantially equal periodic payments. The distributions are made from Financial Institution A, the IRA X custodian, who then transfers the distribution to Financial Institution B, who in turn, transmits it to Taxpayer A. Starting on Date 1, Taxpayer A began taking distributions directly from Financial Institution A, rather than through Financial Institution B, and she requested that Financial Institution B stop distributing funds at that time. On Date 1, she received a distribution of Amount 1 from Financial Institution A, and on Date 2, she received a distribution of Amount 1 from Financial Institution B, both distributions came from IRA X. Despite requests by Taxpayer A, Financial Institution B has failed to take the action requested to offset the duplicate distribution.

Based on the facts and representations, you request a ruling that the additional distribution from IRA X 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.

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 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.

Notice 89-25, 1989-12 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.

Taxpayer A submitted documentation showing that she directed Financial Institution B to cease distributions from IRA X because she was to receive distributions directly from Financial Institution A. Financial Institution B paid a distribution from IRA X in violation of that direction, causing her to receive two distributions in the same month. Taxpayer A represents that Financial Institution B's failure to follow her instruction timely caused her to receive a distribution from IRA X on Date 2 that was in addition to the distribution from IRA X that she had received in Date 1. She further represents that she did not intend to modify the series of substantially equal periodic payments, and had no reason to believe that Financial Institution B would distribute Amount 1 on Date 2 because she had instructed Financial Institution B not to do so.

The information presented and documentation submitted by Taxpayer is consistent with her assertion that the modification to the series of substantially equal periodic payments was due to an error committed by Financial Institution B.

Based on the foregoing, we conclude that the additional distribution from IRA X 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. Taxpayer A

is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into IRA X.

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 \*\*\*\*\* at (\*\*\*\*) \*\*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose