



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

201323045

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 14 2013

Uniform Issue List: 72.00-00

SE: EP. RAITZ

Legend:

Taxpayer A =

IRA B =

Company C =

Company D =

IRA E =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Date 1 =

Date 2 =

Dear

This is in response to the letter dated October 29, 2010, as supplemented by additional information dated June 15, 2012, submitted on your behalf by your authorized representative, in which you request a ruling that the distribution from your individual retirement arrangement (IRA) described in your letter ruling request did not result in a modification to a series of substantially equal payments and, therefore, is not subject to the additional 10 percent income tax imposed on premature distributions under section 72(t) of the Internal Revenue Code (the "Code").

Under penalty of perjury, the following facts and representations have been submitted in support of the ruling request:

Taxpayer A, age 58, maintained IRA B with Company C. Taxpayer A began receiving distributions from IRA B in the monthly amount of Amount 1, which amount was calculated using the fixed amortization method described in Notice 89-25, 1989-1 C.B. 662, and was intended to be a series of substantially equal periodic payments as described in section 72(t)(2)(A)(iv) of the Code. It has been represented that Taxpayer A received a monthly distribution of Amount 1 from IRA B in each calendar year from 20 to January 20. In January 20, the value of IRA B was Amount 2.

In late 2008, Taxpayer A's financial advisor stopped doing business with Company C and began doing business with Company D. Taxpayer A desired to keep his IRA invested with this financial advisor and on Date 1 attempted to transfer all of IRA B but only succeeded in transferring the majority of IRA B, totaling Amount 3, to IRA E with Company D. Taxpayer A did not learn until after Date 1 that Company D would not accept the part of IRA B invested in certain Real Estate Investment Trust ("REIT") funds and as a result, Amount 4 was not transferred to Company D and remained invested in IRA B.

Taxpayer A represents that beginning in February 20, after Amount 3 was transferred to IRA E, that the monthly distributions were re-established with Company D. However, rather than continue with the same gross monthly distribution of Amount 1, Company D erroneously changed the gross monthly distribution to Amount 4 which was the net monthly distribution amount which Taxpayer A had been receiving under IRA B. As a result, the total yearly IRA distribution was less than what had been taken out under the original distribution plan. On Date 2, corrective distributions were made from IRA E to Taxpayer A to match the total yearly distributions Taxpayer A was receiving under IRA B. During this time no distributions were made from IRA B.

Based on these facts and representations, the following rulings are requested:

1. The missed distributions (and subsequent distributions) made from IRA B won't be considered a modification to the series of substantially equal periodic payments from IRA B under section 72(t)(4) of the Code, and consequently won't result in imposition of the 10% additional tax under section 72(t)(1).

2. The fact that the entire IRA B was not transferred to the IRA E in 2009 won't be considered a modification to the series of substantially equal periodic payments from IRA B under section 72(t)(4) of the Code, and consequently won't result in imposition of the 10% additional tax under section 72(t)(1) of the Code.

With respect to your ruling requests, 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 5-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.

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 on 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). 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) of the Code.

Revenue Ruling 2002-62, 2002-2 C.B. 710, modified 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 section 72(t)(2)(A)(iv) of the Code 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).

Section 2.02(e) of Rev. Rul. 2002-62 further provides that under all three methods, substantially equal periodic payments are calculated with respect to an account balance as of the first valuation date selected. 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.

In this case, in 2001, Taxpayer A began receiving payments from IRA B in the amount of Amount 1 calculated using the fixed amortization method described in Notice 89-25. On Date 1, Taxpayer A transferred Amount 3 by means of a trustee-to-trustee transfer from IRA B to IRA E. The transfer of Amount 3 on Date 1 occurred prior to the end of the period described in section 72(t)(4) of the Code, and was a nontaxable transfer of a portion of the account balance in IRA B.

Based on the above facts and representations, pursuant to section 2.02(e) of Rev. Rul. 2002-62, we determine that the Date 1 transfer of Amount 3 from IRA B to IRA E constituted a modification to the series of substantially equal payments which Taxpayer A began to receive from IRA B in 2001.

Thus, as a result, we conclude with respect to your ruling request that the transaction described above, consisting of the Date 1 transfer of Amount 3 from IRA B to IRA E, constituted a modification to a series of substantially equal periodic payments as described in Code section 72(t)(4) of the Code. We further conclude that this cannot be corrected by transferring Amount 3 back to IRA B.

Thus, as a result, we conclude, with respect to your first ruling request, the missed distributions (and subsequent corrective distributions) made from IRA B are considered to be subject to the section 72(t) early distribution tax since a modification to the series of equal periodic payments occurred upon the transfer of Amount 3 from IRA B.

As for your second ruling request, the fact that any portion of IRA B was transferred to another IRA resulted in a modification to the series of substantial equal periodic payments, resulting in the imposition of the excepted 10% section 72(t)(2)(A)(iv) premature distribution tax, beginning with the first payment in 2001 and increased by the amount of tax that would have been paid but for the exception.

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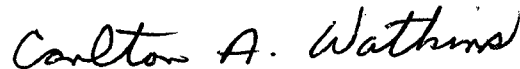
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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.

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

If you wish to inquire about this ruling, please contact ***** (Identification No. ******) at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: