



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201510060

DEC 09 2014

Uniform Issue List: 72.00-00

SE: T: EP: RAIT1

Legend:

Taxpayer A =

IRA X =

Account Y =

Account Z =

Entity B =

Entity C =

Amount 1 =

Amount 2 =

Dear :

This is in response to your request dated December 23, 2013, as supplemented by correspondence dated June 23, 2014, from your authorized representative, in which you request a ruling that additional payments from your Individual Retirement Account ("IRA") made in 2011 will not result in a modification to the series of substantially equal periodic payments being made under section 72(t) of the Internal Revenue Code (the "Code"), and will not be subject to the 10 percent additional tax imposed on early 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 ruling requested.

Taxpayer A represents that she maintained IRA X with Entity B and had been taking substantially equal payments of Amount 1 each month from IRA X calculated using the fixed annuitization method described in Notice 89-25, 1989-1 C.B. 662 ("Notice 89-25"). IRA X included both a bank account and a securities account. The fixed payments were made from the bank account.

In mid-2011, Entity C acquired Entity B, transferred the funds in IRA X's bank and securities accounts to new bank account, Account Y, and new securities account, Account Z, and changed the account from which the fixed payments were made. Instead of transferring funds to Account Y to make the fixed payments, Account Z of IRA X would be used instead; however, the intent was to distribute all of the funds in Account Y before using Account Z. In the course of the transition, an error was made by Entity C which started making payments from Account Z before ending payments from Account Y. The result was that two extra distributions, totaling Amount 2, were made in calendar year 2011. The error was not discovered by Taxpayer A until she received her Form 1099-R from Entity C. A letter from Entity C acknowledging the error accompanied the ruling request.

Based on the above facts and representations, you request a ruling that the two unrequested additional payments totaling Amount 2 made in calendar year 2011 did not result in a modification to a series of substantially equal payments, and therefore, such payments do not subject Taxpayer A's stream of payments from IRA X to the additional 10 percent income tax imposed on premature distributions under section 72(t) of the Code.

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 or her 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 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 ("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. 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 early 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 ("Rev. Rul. 2002-62"), 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 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).

Taxpayer A submitted documentation showing that the acquisition of Entity B by Entity C resulted in the distribution of two additional payments from IRA X in violation of Taxpayer A's direction, causing her to receive two additional distributions totaling Amount 2. She further represents that she did not intend to modify the series of substantially equal periodic payments, and had no reason to believe that Entity C would make two additional distributions. Entity C issued a letter to Taxpayer A acknowledging the mistake.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that Taxpayer A did not intend to modify the series of substantially equal periodic payments and that the additional distribution of Amount 2 from IRA X in 2011 was due to an error committed by Entity C.

Based on the foregoing, we conclude that the additional distribution of Amount 2 from IRA X in 2011 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 early distributions under section 72(t)(1) of the Code.

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

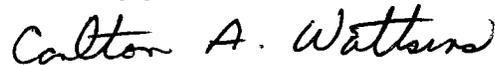
No opinion is expressed as to the tax treatment of the transactions described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

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 is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact \_\_\_\_\_ (ID  
) at \_\_\_\_\_. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: