



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Mario Diaz-Balart
Member, U.S. House of Representatives
8669 NW 36th Street, Suite 100
Doral, FL 33166

Attention:

Dear Representative Diaz-Balart:

I apologize for the delay responding to your inquiry dated August 23, 2021, on behalf of your constituent, . is requesting clarification about his eligibility for an exception to the 10% additional tax on distributions from his retirement plan.

, who is years old, worked as a law enforcement officer for years. He then transferred to a civilian job until he retired in .

He explained his retirement plan told him he will owe a 10% additional tax on distributions from his retirement plan because he did not retire as a law enforcement officer. Although we can't comment on the tax treatment of a particular taxpayer in a general information letter, we hope you find helpful the following general information about the 10% additional tax.

Section 72(t)(1) of the Internal Revenue Code (IRC) imposes a 10% additional tax on the taxable portion of a distribution from a qualified retirement plan (as defined in IRC Section 4974(c)), unless the distribution qualifies for one of the exceptions listed in Section 72(t)(2). One of the exceptions is for a distribution made to an employee after separation from service after reaching age 55.¹ For a distribution from a governmental defined benefit plan to a qualified public safety employee, age 50 is substituted for age

¹ See IRC Section 72(t)(2)(A)(v).

55.² A qualified public safety employee includes any employee of a State (or political subdivision of a State) who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the State (or political subdivision of the State).³ In summary, for this exception to the 10% additional tax to apply, the distribution must be:

- Made from a governmental defined benefit plan,
- Distributed to a qualified public safety employee who has separated from service, and
- Made after the qualified public safety employee has reached age 50.

If this exception doesn't apply, the taxpayer may be eligible for another exception. One of the other exceptions is for 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 the joint lives (or joint life expectancies) of the employee and designated beneficiary.⁴ For a description of all the exceptions to the 10% additional tax under Section 72(t), see <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-tax-on-early-distributions>.

I hope this information is helpful. If you have any questions, please contact
or at .

Sincerely,

Rachel Levy
Associate Chief Counsel (Employee Benefits,
Exempt Organizations, and Employment Taxes)

² See IRC Section 72(t)(10).

³ See IRC Section 72(t)(10)(B).

⁴ See IRC Section 72(t)(2)(A)(iv).