

200601044



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

OCT 12 2005

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L.72-20-04

SE: T. EP. RA: T2

LEGEND:

- Taxpayer A = *****
- Taxpayer B = *****
- IRA W = *****
- IRA X = *****
- IRA Y = *****
- IRA Z = *****
- Amount D = *****
- Amount E = *****
- Date D = *****
- Amount F = *****
- Amount G = *****
- Amount J = *****
- Amount K = *****

Dear *****:

This is in response to your letter dated February 5, 2005, as supplemented by
correspondence dated August 22, 2005, submitted on your behalf by your authorized

representative, in which you request rulings as to whether the proposed method of calculating distributions from individual retirement arrangements (IRAs) owned by you will constitute a series of substantially equal period payments and will not be subject to the 10 percent additional tax imposed on premature distributions under Code section 72(t) and a "make-up" distribution from your individual retirement arrangements ("IRAs") will not result in a modification to a series of substantially equal periodic payment you are currently receiving.

The following facts and representations have been made in support of your ruling request.

As of August 31, 2003, Taxpayer A owned four separate IRAs, IRA W, IRA X, IRA Y and IRA Z, with an aggregate value of Amount D. Effective, September 1, 2003, Taxpayer A aggregated the value of the four IRAs in order to commence to receive payments that constitute a "substantially equal periodic payments" within the meaning Code section 72(t)(2)(A)(iv). Taxpayer A selected the amortization method using an interest rate equal that equal to the applicable federal mid-term rate and a single life expectancy of Expectancy H as determined in section 1.401(a)(9)-9, Q&A-1 of the Income Tax Regulations (regulations). Based on these factors, Taxpayer A's annual distribution from his IRAs for 2003 was Amount E.

In this case, Taxpayer A chose Date D as his annual recalculation date for years 2004 through 2008, continued use of the single life expectancy table for determination of his life expectancy, and an interest rate that was not more than 120 percent of the applicable federal mid-term rate for the month of January or February (the two months preceding the annual recalculation date). As of February 29, 2004, the aggregate value of Taxpayer A's IRAs was Amount G and applying the above factors resulted in an annual distribution of Amount K. Taxpayer A intends to perform the identical recalculation as described above on Date D for 2005, 2006, 2006, 2007, and 2008. Taxpayer A will attain age 59 ½ in 2008.

Taxpayer A represents that during the period of March 1, 2004 through December 31, 2004, he received a distribution from his IRAs in the amount of Amount K thus correctly satisfying his 2004 annual distribution requirement under the methodology he selected to receive payments from his IRAs.

In December 2003, Taxpayer A took a distribution from IRA W in order to satisfy his first annual distribution payment. However, a mathematical error occurred which resulted in a distribution for 2003 in the amount of Amount F, which is less than Amount E by Amount J (which is less than .2 of one percent of Amount E). Taxpayer A states that the error was not detected until late January 2005. Taxpayer A proposes to correct the error made in the distribution amount in 2005 by having an amount equal to Amount J

distributed from his IRAs in order to preserve the stream of payments as previously calculated.

Based on the forgoing, the Taxpayers request the following rulings:

1. The failure to distributed the entire required distribution amount for 2003 year will not be considered a modification to a series of substantially equal periodic payments under Code section 72(t)(4) that will result in the imposition of the 10 percent additional tax under Code section 72(t)(1).
2. The method of determining periodic payments as described herein constitutes a series of substantially equal periodic payments under Code section 72(t)(2)(A)(iv).

Code section 408(d)(1) 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.

Code section 72 provides rules for determining how amounts received as annuities, endowments, or life insurance contracts and distributions from qualified plans are to be taxed.

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 payment (not less frequently than annually) made for the life (or life expectancy) for the employee or joint (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 later of the employee's attainment of age 59½, 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 table 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 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 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.

In this case, Taxpayer A has determined the annual payments from the IRAs using the fixed amortization method as described in Revenue Ruling 2002-62, except that rather than making a fixed annual payment, Taxpayer A will recalculate the annual distribution for each succeeding year. Taxpayer A will recalculate the amount of the annual payment for each year 2004 through 2008. For those years, Taxpayer A will recalculate the annual distribution based on the account balance of the IRAs on Date D, determine

his life expectancy as of his respective age in each of those years using the single life table contained in section 1.401(a)(9)-9, Q&A-1 of the regulations, and the interest rate equal to 120 percent of the applicable federal mid-term rate for either of the two months immediately preceding Date D.

The life expectancy and interest rate used are such that they so not result in the circumvention of the requirements of sections 72(t)(2)(A)(iv) and 72(t)(4) of the Code (through the use of an unreasonable high interest rate or an unreasonable life expectancy).

Taxpayer A represents that a mathematical error caused him to receive a distribution from his IRAs for distribution year 2003 that was less then the amount determined under the method he chose to commence receiving payments from his IRAs. Taxpayer A

further represents that the error was not detected until late January 2005. Taxpayer A proposes to receive a "make-up" distribution in 2005 in an amount of Amount E that would satisfy his annual payment distribution requirement for 2003 as determined under the fixed amortization method. When this amount is added to the amount calculated for 2005, Taxpayer A will receive an amount for calendar year 2005 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 2005, Taxpayer A will continue to use the fixed amortization method for calculating the annual payments from his IRAs.

Based on the foregoing we conclude that the failure to distribute the entire required annual payment from the IRAs for the 2003 calendar year and the subsequent "make-up" distribution for the year that will be made in calendar year 2005 will not be considered a modification of a series of substantially equal periodic payments under Code section 72(t)(2)(A)(iv) and, therefore will not be subject to the 10 percent additional tax under on premature distributions under section 72(t)(1). We further conclude that the method (as modified) of determining periodic payments results in substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code, and such payments will not be subject to the additional tax under section 72(t) unless the requirements of section 72(t)(4) are not met.

These rulings assume that the above IRAs qualify under Code section 408 at all relevant times.

This letter is directed only to the taxpayer that requested it. Code section 6110(k)(3) provides that it may not be used or cited by others 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 have any questions, please contact
SE:T:EP:RA:T2

Sincerely yours,

(Signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose