200616046

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 27 2006

Uniform Issue List 72-20-04

T:EP:RA:T2

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LEGEND:

Taxpayer A	=	***
IRA M	=	***
IRA N	=	***
Company B	=	***
Company D	=	***
Amount C	=	***
IRA O	=	***
IRA P	=	***
Amount E	=	***
Amount F	=	***
Amount G	=	***
Amount H	=	***
IRA Q	=	***
Company R	=	***
Company X	=	***
Amount I	=	***

Dear ***:

This is in response to your letter dated April 25, 2005, supplemented by additional correspondence dated November 21, 2005, submitted on your behalf by your authorized representative in which you request a ruling as to whether an inadvertent rollover into your individual retirement arrangement (IRA) will result in a modification to a series of substantially equal periodic payments you were receiving and, therefore, will not be subject to the additional 10 percent tax imposed on premature distributions under section 72(t) of the Internal Revenue Code (Code).

The following facts and representations were made in support of your ruling request:

Taxpayer A retired in at the age of fifty-six. Taxpayer A maintained IRA M and IRA N, rollover IRAs he established in with Company B with a distribution he received from a qualified retirement plan. Company B was the custodian of IRA M and IRA N.

Taxpayer A received annual distributions from IRA M in the form of a series of substantially equal periodic payments calculated under the fixed annuitization method. Taxpayer A was required to annually withdraw an aggregate amount, Amount C, from IRA M. No distributions were taken from IRA N. The distributions taken from IRA M began on and were intended to comply with the requirements of section 72(t)(2)(A)(iv) of the Code.

In , Taxpayer A rolled over a portion of IRA N into IRA O, to be managed by Company D. In , Taxpayer A rolled over the remainder of IRA N into IRA O. Also in , Taxpayer A rolled over the funds of IRA M, in their entirety, to IRA P, to be managed by Company D.

Taxpayer A continued receiving the series of substantially equal periodic payments of Amount C for three years in monthly installments of Amount E, initially from IRA M and then from IRA P, subsequent to the rollover.

In , pursuant to Revenue Ruling 2002-62, 2002-42 I.R.B. 710, section 2.03(b), Taxpayer A converted the substantially equal periodic payments from IRA P from the fixed annuitization method to the required minimum distribution method. Taxpayer A received Amount F from IRA P in monthly installments under the required minimum distribution method based upon the IRA P balance of Amount G on .

On , Taxpayer A requested Company D to roll over Amount H from IRA Q into IRA O. Company R was the custodian of IRA Q. However, a Company D financial advisor inadvertently rolled over Amount H from IRA Q into IRA P, the IRA from which the series of substantially equal periodic payments were being taken. This rollover occurred five months after the final distribution from IRA P was determined. The last substantially equal periodic payment taken from IRA P was on , the final monthly installment of Taxpayer A's series of substantially equal periodic payments.

Taxpayer A's series of substantially equal periodic payments from IRA P (with funds rolled over from IRA M) continued for the required five year period under Code section 72(t)(4)(A)(ii)(I), which ended .

On , a Company D financial advisor was notified by Company X that it believed the addition of Amount H from IRA Q to IRA P resulted in a modification of Taxpayer A's series of substantially equal periodic payments. Company X issued a Form 1099-R for IRA P that indicated an early distribution of Amount F.

You represent that Amount H never represented more than 1/1100 of the value of IRA P. You further represent that the tax and interest on a modification to a series of substantially equal periodic payments will exceed Amount I. You represent that Company D and Company X acknowledge the inadvertent error and are working on procedures to avoid this error in the future.

Based on the foregoing, you request a ruling that the inadvertent rollover by Company D of Amount H into IRA P, the IRA from which a series of substantially equal periodic payments were being taken, will not be considered a modification of a series of substantially equal periodic payments within the meaning of section 72(t)(4) of the Code.

Section 408(d)(1) of the Code provides, 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) 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 ½, 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). Question and Answer-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, 2002-42 I.R.B. 710, which was published on October 21, 2002, modifies Q&A-12 of Notice 89-25. Revenue Ruling 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) 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 annuitization method provides that the annual payment for each year is determined by dividing the account balance by an annuity factor that is the present value of an annuity of one dollar ($1) per year beginning at the taxpayer's age and continuing for the life of the taxpayer (or the joint lives of the individual and beneficiary). The annuity factor is derived using the mortality table in Appendix B of Rev. Rul. 2002-62 and using the chosen interest rate. Under this method, the account balance, the annuity factor, the chosen interest rate 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.

The required minimum distribution method provides that the annual payment for each year is determined by dividing the account balance for that year by the number from the chosen life expectancy table for that year. Under this method, the account balance, the number from the chosen life expectancy table and the resulting annual payments are redetermined for each year.

An individual who begins distributions in a year using either the fixed amortization method or the fixed annuitization method may in any subsequent year switch to the required minimum distribution method to determine payment for the year of the switch and all subsequent years and the change in method will not be treated as a modification within the meaning of section 72(t)(4) of the Code. Once this change is made, the required minimum distribution method must be followed in all subsequent years. Any subsequent change will be a modification for purposes of section 72(t)(4) of the Code.

In this case, Taxpayer A states that he began receiving payments from IRA M, in calendar year , in a series of substantially equal periodic payments as described in section 72(t)(2)(A)(iv) of the Code using the fixed annuitization method as described in Notice 89-25. Taxpayer A further states that the annual payment from IRA M as determined under the above methodology was Amount C. In and , Taxpayer A rolled over his IRA N funds he had with Company B into IRA O with Company D. Furthermore, in , Taxpayer A made a trustee-to-trustee transfer of the IRA M funds to IRA P also with Company D. As a result of the rollover and trustee-to-trustee transfer, Taxpayer A now maintains two IRAs with Company D, IRA O

and IRA P, which continued to distribute the series of substantially equal periodic payments. Taxpayer A received substantially equal periodic payments, from IRA M and then IRA P, for three years using the fixed annuitization method. In ,
based upon section 2.03(b) of Rev. Rul. 2002-62, Taxpayer A changed from the fixed annuitization method to the required minimum distribution method. Taxpayer A represents that the annual payment in calendar year from IRA P, as determined using the required minimum distribution method, was Amount F. Amount F is lower than Amount C.

Taxpayer A states that on , he requested that Company D roll over Amount H from IRA Q into IRA O. However, in error, Company D rolled Amount H into IRA P, the IRA from which Taxpayer A was receiving the series of substantially equal periodic payments. This error occurred five months after the final distribution from IRA P was determined. The last substantially equal periodic payment from IRA P for calendar year 2004 was taken in . Taxpayer A states that the five year period under section 72(t)(4)(A)(ii)(I) ended on . Custodian X notified Company D of the resulting modification on , a date that is subsequent to the date of the final distribution of the periodic payments from IRA P.

If Amount H had been rolled over into IRA O as requested by Taxpayer A on , Company X would not have raised the issue of modification regarding calendar year .

In this case, Taxpayer A did all he could in order to ensure that he continued to receive Amount F from IRA P and had no reason to believe that Company D would not make the rollover of Amount H from IRA Q to IRA O as requested. Taxpayer A did not intend to modify the series of substantially equal periodic payments he began receiving from IRA M (and subsequently IRA P) in calendar year . Rather, the modification is due to the failure of Company D to roll over Amount H into IRA O instead of IRA P in calendar year .

Based on the foregoing, we conclude that the error made by Company D that resulted in Amount H being rolled into IRA P in calendar year will not be considered a modification of a series of substantially equal periodic payments from IRA P under Code section 72(t)(2)(A)(iv) that would result in an imposition of the 10 percent additional tax imposed on premature distributions under section 72(t)(1) of the Code.

This ruling does not express an opinion as to whether (but assumes that) the series of substantially equal periodic payments received from to from IRA M and subsequently from IRA P satisfied Code section 72(t)(2)(A)(iv) and Rev. Rul. 2002-62. This ruling assumes that IRA P meets the requirements of section 408 of the Code at all times relevant to this transaction.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this ruling has been sent to your authorized representative pursuant to the provision of a Form 2848 (Power of Attorney) on file in this office.

If you have any questions, please contact ***, SE:T:EP:RA:T2 at ***.

Sincerely,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose Form 437