Internal Revenue Service

Department of the Treasury

Washington, DC 20224

200027060

Significant Index Number: 408.08-00

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T1

Date: APR 12 2000

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

Dear :

This is in response to a ruling request dated November 11, 1999, from your authorized representative concerning an individual retirement arrangement (IRA) described under section 408(a) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted on your behalf:

Taxpaxyers A and B married on August 4, 1991, and divorced on October 8, 1999. Taxpayer A is currently age 48 and Taxpayer B 52. Among the marital assets is an IRA account (IRA X) owned by Taxpayer B. It is represented that Taxpayer B began receiving substantially equal periodic payments from IRA X in 1995 at the age of 48 of approximately $3,495 a month.

Pursuant to the Decree of Dissolution of Marriage between Taxpayer A and Taxpayer B, a portion of IRA X is to be transferred by means of a trustee to trustee transfer from Taxpayer B's IRA X to a new IRA account to be owned by Taxpayer A. Taxpayer A's decreed transfer is equal to $65,000 or 13.349% of the balance of Taxpayer B's total account balance in IRA X.

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Based on the foregoing facts and representations, you have requested the following rulings:

1) That the division of IRA X as described and subsequent transfer of the amount specified in the dissolution document pursuant to the Decree of Dissolution will be considered a nontaxable transfer per Code section 408(d)(6).

2) Taxpayer A is not required to continue, in a proportionate amount (her transferred portion of IRA X to the total IRA (13%)), the substantially equal periodic payments (under Code section 72(t)(2)(A)(iv) from her share (13%) of her former husband's IRA account and by not continuing these payments does not activate the Code section 72(t)(1) early withdrawal penalties because of Code section 72(t)(4)(A), a modification of a series of substantially equal periodic payments.

Code section 408(d)(1) states that, except as otherwise provided in this subsection, 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 408(d)(6) states that the transfer of an individual's interest in an IRA to his or her spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of Code section 71(b)(2) is not considered to be a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an IRA of such spouse, and not such individual. Thereafter such IRA for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

Code section 71(b)(2) defines the term "divorce or separation instrument" means (A) a decree of divorce or separate maintenance or a written instrument incident to such a decree, (B) a written separation agreement, or (C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

Section 1.408-4(g)(1) of the Income Tax Regulations provides that the transfer of an individual's interest, in whole or in part, in an IRA to his or her former spouse under a valid divorce decree or a written instrument incident to such divorce shall not be considered to be a distribution from an IRA to such individual or the former spouse. Section 1.408-4(g)(2) provides that the interest described in this paragraph (g) which is transferred to the former spouse shall be treated as an IRA of such former spouse if the interest is in an IRA.

In order to apply section 72 to amounts distributed from an IRA, such IRA distribution must be taxable under section 408(d)(1). Code section 408(d)(6) provides an exception to Code section 408(d)(1) that IRA transfers incident to a divorce are not taxable at the time of the transfer. Accordingly, we conclude with respect to ruling

request (1) that the division of IRA X and the subsequent transfer pursuant to the Decree of Dissolution of Marriage will be considered a nontaxable transfer under section 408(d)(6).

With regard to ruling request (2), Code section 72(t)(1) provides that if any taxpayer receives any amount from a qualified retirement plan as defined in Code section 4974 (which includes an IRA), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

Code section 72(t)(2)(A)(iv) provides that a distribution from a qualified retirement plan that is 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 is not subject to the tax in Code section 72(t)(1).

Code section 72(t)(4)(A) states that if paragraph (1) does not apply to a distribution by reason of the paragraph (2)(A)(iv), and the series of payments under such a paragraph are subsequently modified (other than by reason of death or disability) – (i) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59 & ½, or (ii) before the employee attains age 59 & ½, 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 which (but for paragraph (2)(A)(iv)) would have been imposed, plus interest for the deferral period.

Code section 72(t)(4)(B) defines the term "deferral period" as the period beginning with the taxable year in which (without regard to paragraph (2)(A)(iv)) the distribution would have been includible in gross income and ending with the taxable year in which the modification described in subparagraph (A) occurs.

Code section 408(d)(6) provides that the interest transferred pursuant to a decree of divorce is treated as an IRA of the former spouse and not the individual. Because Taxpayer A's IRA is treated as her own IRA, Taxpayer A is not required to begin receiving distributions from her IRA after the transfer incident to the divorce decree to preclude the application of Code sections 72(t)(4) or 72(t)(1) to her IRA. Thus, we rule that Taxpayer A is not required to continue to receive, in a proportionate amount, substantially equal periodic payments from her share of Taxpayer B's IRA X transferred to her IRA to preclude the application of Code section 72(t)(4)(A) with respect to her IRA.

This ruling is conditioned on IRA X and Taxpayer A's IRA satisfying the requirements of Code section 408(a) at all relevant times. This ruling does not address whether Code section 72(t)(4) or 72(t)(1) applies to IRA X.

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

A copy of this ruling is being sent to your authorized representative pursuant to a power of attorney on file in this office.

Sincerely yours,

John Aurea

Manager, Employee Plans
Technical Group 1
Tax Exempt and Government
Entities Division

Enclosures:
Deleted Copy of the Ruling
Notice 437

cc: