Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Significant Index No. 72.20-04

Person to Contact:

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Refer Reply to:
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Date:
JUL 14 2000

In re: Request for ruling on behalf of

This letter is in response to your request, dated February 19, 2000, in which you asked for a ruling as to whether certain proposed distributions from three individual retirement accounts (IRAs) owned by you are part of a series of substantially equal periodic payments and are therefore not subject to the 10 percent additional tax imposed under section 72(t) of the Internal Revenue Code (Code). The ruling request was amended by the taxpayer's authorized representative (pursuant to Form 2848) in a telephone call with Ms. Trichilo of our office on June 21, 2000, to provide that the methodology calculates an annual payment for a calendar year, using an interest rate assumption of 8.237 percent, and to clarify the ruling requested.

According to the facts as stated, you are the owner of three traditional IRAs, (IRAs 1, 2, and 3), and a Roth IRA. Your date of birth is December 4, 1944, and you will attain age 56 in 2000. You want to start taking distributions from IRAs 1,2, and 3 in 2000, and want to avoid the additional 10 percent tax, imposed under section 72(t)(1) on early distributions, by using the exception provided in section 72(t)(2)(A)(iv) of the Code for substantially equal periodic payments. You have proposed to calculate an annual distribution amount for 2000 by amortizing the aggregated account balances of IRAs 1, 2, and 3 as of January 31, 2000, over a number of years equal to your life expectancy (derived from Table V of regulation section 1.72-9, using your age attained in 2000), using an interest rate assumption of 8.237 percent. For subsequent years, the same amount will be distributed.

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Ruling Requested

Based on these facts, you have requested the following ruling.

The proposed method of determining periodic payments satisfies one of the methods described in Notice 89-25 and 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 of section 72(t)(1) unless the requirements of section 72(t)(4) are not met.

Applicable Law

Section 408(d) of the Internal Revenue Code provides that amounts paid or distributed out of an individual retirement plan must be included in gross income by the payee or distributee in the manner provided under section 72 of the Code.

Section 72 of the Internal Revenue 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) of the Internal Revenue Code was added to the Code by the Tax Reform Act of 1986 (TRA '86), effective generally for taxable years beginning after December 31, 1986. 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, which 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 which 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 such employee and his 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 (1) the close of the 5-year period beginning with the date of the first payment, and (2) 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

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tax which would have been imposed except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

Section 1.72-9 of the Income Tax Regulations (Regulations) provides tables that are to be used in connection with computations under section 72 and the regulations thereunder. Included in this section are tables giving life expectancies for one life (Table V) and joint life and last survivor expectancies for two lives (Table VI).

Notice 89-25, 1989-1 C.B. 662, provides 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). Q&A-12 of Notice 89-25 provides three methods for determining substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv) of the Code. Two of these methods involve the use of an interest rate assumption which must be an interest rate that does not exceed a reasonable interest rate on the date payments commence.

Proposed Methodology

The proposed method for determining annual periodic payments described in the ruling request, as modified, is to calculate an end of year annual payment for the year 2000 by amortizing the aggregated account balances of IRAs 1, 2, and 3 as of January 31, 2000, over a number of years equal to your life expectancy (derived from Table V of section 1.72-9 of the regulations, using your age attained in 2000), using an effective annual interest rate assumption of 8.237 percent. For subsequent years, the same annual distribution amount will be distributed. For example, the annual distribution amount for 2001 will be the same as the annual distribution amount for 2000. The annual distribution amount will be taken out of one or more of the three IRAs (IRA 1, IRA 2 or IRA 3), and only from these IRAs.

Conclusion

The life expectancy and the interest rate used are such that they do 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 unreasonably high interest rate or an unreasonable life expectancy.

Accordingly, we conclude that the proposed method (as modified) of determining periodic payments satisfies one of the methods described in Notice 89-25 and 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 of section 72(t) unless the requirements of section 72(t)(4) are not met.

Sincerely yours,

Martin L. Pippins

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