Internal Revenue Service

72.22-01
72.22-02

Department of the Treasury
Washington, DC 20224

200052039

Contact Person:

Telephone Number:

In Reference to: T:EP:RA:T3

Date:

OCT 2 2000

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

Date 1:

Date 2:

Amount 1:

Dear

This is in response to the letter dated , letter, as supplemented by correspondence dated , in which you, through your authorized representative, request a series of letter rulings under sections 72(t)(1) and 72(t)(2) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, is married to Taxpayer B, whose date of birth was Date 2. Neither Taxpayer A nor Taxpayer B has attained age 59 ½. Taxpayers A and B are currently residents of State C.

Taxpayers A and B are currently in the process of obtaining a divorce. Their divorce will include a properly settlement.

Taxpayer A currently owns an individual retirement arrangement (IRA 1) which your authorized representative asserts meets the requirements of Code section 408(a). As of July 3, 2000, the value of IRA 1 was approximately Amount 1.

247

In 1998, Taxpayer A began to receive a stream of payments from IRA 1 which your authorized representative asserts was intended to comply with the requirements of Code section 72(t)(2)(A)(iv). Taxpayer A has received $300,000 from his IRA 1 during 1998, 1999 and 2000. During each of said years, Taxpayer A received two distributions from said IRA 1. Taxpayer A's IRA 1 distributions were based on the joint life expectancies of Taxpayers A and B using an interest rate which your authorized representative asserts was reasonable as of the date on which IRA 1 distributions commenced.

As part of their divorce agreement, Taxpayers A and B intend to divide IRA 1. It has been represented by your authorized representative that approximately 1/3 of IRA 1 will be transferred directly to a new IRA (IRA 2) to be set up and maintained in the name of Taxpayer B. This ruling letter assumes that said transfer will meet the requirements of Code section 408(d)(6).

After, and as a result of the above-referenced transfer, Taxpayer A will reduce his annual distribution from IRA 1 to approximately $200,000 beginning with calendar year 2001. Taxpayer B intends to receive no distribution from her IRA 2 during calendar year 2000. During either calendar year 2001 or calendar year 2002, Taxpayer B will transfer a portion of her IRA 2 into another IRA (IRA 3). After establishing IRA 3, Taxpayer B intends to receive substantially periodic payments therefrom, not less frequently than annually, over her single life expectancy computed based on an interest rate equivalent to the Long-term Applicable Federal Rate as provided in Revenue Ruling 2000-32, Table 1 . Said rate during July, 2000, was 6.4%. The actual rate used will be the rate in effect during the month in which distributions begin.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. The reduction in the annual distribution from IRA 1 to Taxpayer A beginning in calendar year 2001, prior to Taxpayer A's attaining age 59 ½, and assuming Taxpayer A has not died and has not become permanently disabled, will not constitute a subsequent modification in his series of periodic payments, as the term "subsequent modification" is used in Code section 72(t)(4), and will not result in the imposition upon Taxpayer B of the 10 percent additional income tax imposed by Code section 72(t)(1) pursuant to Code section 72(t)(4)(A)(ii);

2. Taxpayer B's commencement of distributions from her IRA 3, as referenced above, will not constitute a subsequent modification of Taxpayer A's series of periodic payments and will not result in the

imposition of the 10 percent additional income tax imposed by Code section 72(t)(1) pursuant to Code section 72(t)(4)(A)(ii) on Taxpayer A; and

3. Taxpayer A may change the method of distribution, and the amount thereof, from his IRA 1 at any time after calendar year 2002 without imposition on him of the 10 percent additional income tax imposed by Code section 72(t)(1) which is imposed on subsequent modifications on periodic payments series by Code section 72(t)(4)(A)(ii).

With respect to your letter ruling requests, Code section 72(t)(1) provides that if any taxpayer receives any amount from a qualified retirement plan as defined in Code section 4974(c) (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 imposed by Code section 72(t)(1).

Code section 72(t)(4)(A) provides that if paragraph (1) does not apply to a distribution by reason of paragraph (2)(A)(iv), and the series of payments under such paragraph are substantially 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 an individual's IRA interest transferred pursuant to a decree of divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be treated as a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and

Thereafter, such transferred interest is to be treated as maintained for the benefit of the former spouse.

With respect to your first ruling request, Taxpayer A currently owns IRA 1 from which he has been receiving annual distributions in the amount of $300,000 since calendar year 1998 which distributions were calculated to comply with the requirements of Code section 72(t)(2)(A)(iv). Pursuant to a property settlement which constitutes part of their divorce decree, Taxpayer A will have approximately 1/3 of his IRA 1 transferred to IRA 2, an IRA set up and maintained in the name of Taxpayer B. Taxpayer A will have no interest in Taxpayer B's IRA 2.

Taxpayer A's calendar year 1998 through calendar year 2000 IRA 1 distributions have been based on said IRA 1 pre-divorce division balance. Said balance will decline by approximately 1/3 because of the divorce of Taxpayers A and B. Upon careful consideration of these facts, the Service believes that compliance with Code section 72(t)(2)(A)(iv) for calendar years beginning with 2001, the calendar year following the calendar year of the divorce, will continue if Taxpayer A reduces his annual IRA 1 distributions by approximately 1/3.

With respect to your first, second and third ruling requests, as noted above, Code section 408(d)(6) provides that IRA amounts transferred to an IRA of a former spouse pursuant to its provisions become the IRA property of the former spouse. Since IRA 2, and eventually IRA 3, will be the property of Taxpayer B, Taxpayer B is not required to conform to Taxpayer A's IRA 1 periodic payment scheme. As a result, Taxpayer B is not required to receive distributions from IRA 2 during calendar year 2000. Furthermore, if Taxpayer B chooses not to receive distributions from IRA 2 during calendar year 2000, her failure to do so will not result in a substantial modification, as that term is used in Code section 72(t)(4), of Taxpayer A's IRA 1 periodic distribution scheme as long as Taxpayer A receives distributions from said IRA 1 in the amount referenced in the above response to ruling request one. Finally, Taxpayer B's receiving distributions from her IRA 3 either during calendar year 2001 or calendar year 2002 will not determine if Taxpayer A's post-divorce IRA 1 distributions comply with the requirements of Code section 72(t)(2)(A)(iv).

Thus, with respect to your first and second ruling requests, the Service concludes as follows:

1. The reduction in the annual distribution from IRA 1 to Taxpayer A beginning in calendar year 2001, prior to Taxpayer A's attaining age 59 ½, and assuming Taxpayer A has not died and has not become permanently disabled, will not constitute a subsequent modification in his

series of periodic payments, as the term "subsequent modification" is used in Code section 72(t)(4), and will not result in the imposition upon Taxpayer B of the 10 percent additional income tax imposed by Code section 72(t)(1) pursuant to Code section 72(t)(4)(A)(ii); and

2. Taxpayer B's commencement of distributions from her IRA 3, as referenced above, will not constitute a subsequent modification of Taxpayer A's series of periodic payments and will not result in the imposition of the 10 percent additional income tax imposed by Code section 72(t)(1) pursuant to Code section 72(t)(2)(A)(ii) on Taxpayer B.

With additional respect to your third ruling request, Taxpayer B's date of birth was Date 2; thus, she will attain age 59 ½ during November, 2013. Thus, if Taxpayer B begins receiving payments from either IRA 2 or IRA 3 prior to that date, such distributions will be subject to the exceptions thereto enumerated in Code section 72(t)(2), e.g. the substantially equal payment exception of Code section 72(t)(2)(A)(iv).

Notice 89-25, 1989-1 C.B. 662, Question and Answer-12, lists three methods by which periodic payments from either a qualified plan or an IRA will comply with the requirements of Code section 72(t)(2)(A)(iv). However, these three methods are not the sole methods of complying with said Code section.

In this case, as noted above, Taxpayer B intends to begin receiving distributions from her IRA 3 over her life expectancy using an assumed interest rate equivalent to the Long-term Applicable Federal Rate as provided in Revenue Ruling 2000-32, Table 1. In the Service's view, such method is in conformity with the requirements of Code section 72(t)(2)(A)(iv).

Thus, with respect to your third ruling request, the Service concludes as follows:

> Periodic distributions to Taxpayer B from IRA 3, as described above, will constitute "substantially equal periodic payments" as that term is used in Code section 72(t)(2)(A)(iv) and, as such, will not be subject to the 10 percent additional income tax imposed by Code section 72(t)(1).

This ruling letter is based on the assumption that IRA1 either has met or will meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that the transfer of a portion of Taxpayer A's IRA 1 to Taxpayer B's IRA 2 will comply with the requirements of Code section 408(d)(6). Finally, it

assumes that Taxpayer B's IRAs 2 and 3 will comply with the requirements of Code section 408(a) at all times relevant thereto.

This ruling letter is directed only to the taxpayer, Taxpayer B, 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 letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division