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Internal Revenue Service

Department of the Treasury
Washington, DC 20224

SIN: 72.20.00

Person To Contact:

Telephone Number:

Refer Reply To: T:EP:RA:T3

Date: APR - 4 2001

Legend:

H =

IRA X =

This is in response to a ruling request submitted on your behalf by your authorized representative in a letter dated November 28, 2000, as supplemented by a communication of March 16, 2001, concerning disability and the application of the early distribution tax of section 72(t) of the Internal Revenue Code

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

H, a medical doctor, manifested the early signs of a debilitating kidney condition in 1986 when he was 39. In September 1996, H was forced to leave his medical practice. He was 49 years of age. Since September 1996, H has received full disability insurance benefits. H has been determined to be permanently disabled by two different insurance companies. H's disability continues to this time. It is requested that we assume that H has been disabled within the meaning of section 72(m)(7) of the Code since September 1996 without making that determination.

In 1997, shortly after H became permanently disabled and was forced to leave his medical practice, he began taking distributions from IRA X in substantially equal periodic payments over a period based on his life expectancy as provided in section 72(t)(2)(A)(iv) of the Code. These payments continue through the current time.

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H, now, proposes to modify the payment schedule that commenced in 1997 and requests a ruling that the proposed modification will not subject him to the early distribution tax imposed by section 72(t)(1) of the Code because he has been disabled since before commencing the payments and continues to be disabled.

In this regard, section72(t)(1) of the Code imposes an additional income tax on certain early distribution from qualified retirement plans, including IRA's. The tax is generally equal to 10 percent of the amount includable in gross income.

Section 72(t)(2) of the Code provides that the additional tax does not apply to these early distributions, including distributions attributable to the employees being disabled within the meaning of section 72(m)(7) (see 72(t)(2)(A)(iii)) and distributions that are part of a series of substantially equal periodic payments (not less frequently than annuallly) made for the life or life expectancy of the employee (see 72(t)(2)(A)(iv)).

Section 72(t)(4) of the Code provides that if the series of payments described in section 72(t)(2)(A)(iv) is modified (other than by death or disability) 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 before the employee attains age 59 ½, the taxpayer's tax will be increased to reflect the tax that otherwise would have been imposed.

Section 72(m)(7) of the Code provides that an individual shall be considered to be disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.

With respect to H's disability, section 8.01 of Revenue Procedure 2001-4, 2001 I.R.B. 121, states that the Internal Revenue Service will not ordinarily issue a ruling in certain areas because of the inherently factual nature of the problem involved. Accordingly, we will not determine whether H is disabled within the meaning of section 72(m)(7) of the Code.

With respect to your ruling request, assuming that H is disabled within the meaning of section 72(M)(7) of the Code since before his distributions commenced, we conclude that the additional tax would not apply to any of his distributions including any distributions resulting from a modification of the schedule of substantially equal payments described in section 72(t)(2)(A)(iv). Further, under section 72(t)(4) of the Code, it is specifically provided that a modification of the substantially equal payments described in section 72(t)(2)(A)(iv) will not result in a reimposition of the additional tax so long as the modification is due to disability

This ruling is based on the assumption that IRA X will continue to qualify under section 408 of the Code. This ruling is also based on the assumption that H is disabled within the meaning of section 72(m)(7) of the Code.

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

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In accordance with a power of attorney submitted with this request, the original of this letter is being sent to one of your authorized representatives and a copy is being sent to a second representative.

Sincerely yours,

Frances V. Sloan

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

Enclosures:
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Notice 437

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