Internal Revenue Service Department of the Treasury

Washington, DC 20224

Significant Index Numbers: 408.00-00 and 72.20-00

Person to Contact:

Telephone Number:

Refer Reply to:
OP:E:EP:T:1, Room 6214

199909059

Date: DEC 10 1998

Legend:

Taxpayer A =

IRA W =

Dear :

This is in response to a letter dated May 13, 1998, as supplemented by additional correspondence dated September 22, 1998, and October 14, 1998, in which your authorized representative requests a private letter ruling from the Internal Revenue Service.

Your authorized representative submitted the following facts and representations with the request:

Taxpayer A left a stock brokerage firm in 1990, and received a distribution of qualified retirement plan benefits totalling $1,233,045. Of this amount, he retained and paid taxes on $233,045, and made a rollover contribution to IRA W, an individual retirement arrangement under section 408(a) of the Internal Revenue Code ("Code"). The account balance of IRA W as of December 31, 1997, was $9,191,399. Taxpayer A's date of birth is The date of birth of Taxpayer A's wife and beneficiary is

Taxpayer A has directed the investment of IRA W from its inception through the present day. He began taking periodic distributions from IRA W in January 1993, when he was 44 years old. Each year's withdrawal has been in the amount of $176,499, representing an annuity calculated to exhaust the balance of IRA W as of December 31, 1992 ($2,582,180), based on a joint and survivor life expectancy of 44.6 years and an applicable federal rate of 6.8 percent.

As a result of substantial appreciation in IRA W, Taxpayer A desires to modify the basis on which periodic distributions will continue to be made, effective for 1998 and subsequent years. The proposed method for determining annual periodic payments, as modified, will be to calculate an annual payment by amortizing the account balance (determined as of the third Monday in each January or the next day on which the securities markets are open) over Taxpayer A's remaining life expectancy using a reasonable interest rate. For this purpose, life expectancy will be determined for purposes of the initial payment using Table V of section 1.72-9 of the regulations, starting with 33 years for the 1998 distribution and reducing that figure by one for each subsequent year through 2030. A constant annual interest rate of 7.2 percent (the rate under Code section 7520 for January, 1998) will be assumed for each year's distribution.

For example, for 1998, the distribution will be $672,280, based on an account balance of $9,000,284 as of January 19, 1998, a life expectancy of 33 years, and interest of 7.2 percent. For 1999, the distribution will be based on the account balance as of January 18, 1999, a life expectancy of 32 years, and interest of 7.2 percent.

Taxpayer A realizes that this action will amount to a modification of the series of withdrawals commenced in 1993, and will require the payment of the additional 10 percent penalty, plus interest, on the withdrawals taken in the years 1993 through 1997 pursuant to Code section 72(t)(4).

Based on the foregoing facts and representations, your authorized representative requests the following ruling:

That following the modification of the distributions to Taxpayer A from IRA W, the withdrawals will satisfy the requirements under Code section 72(t)(2)(iv) as amounting to equal periodic payments over the taxpayer's life expectancy, and the withdrawals will therefore not be subject to the 10 percent additional tax under Code section 72(t)(1).

Code section 408(d) provides that amounts paid or distributed out of an IRA must be included in gross income by the payee or distributee in the manner provided under Code section 72. Code section 72 provides rules for determining how amounts received as annuities, endowments or life insurance contracts and distributions from qualified plans are to be taxed.

Code 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. Code section 72(t)(2)(A)(iv) 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 (of life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his beneficiary.

Code section 72(t)(4) imposes the additional limitation on distributions excepted from the 10 percent tax by Code 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 tax which would have been imposed except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

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. In the absence of Regulations on section 72(t), this notice provided guidance with respect to the exception to the tax on premature distributions provided under section 72(t)(2)(A)(iv). Q&A-12 provides three methods for determining substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv). 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.

Based on the method of determining periodic payments described above, with respect to the taxpayer's ruling request, we conclude that this 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). The life expectancies and the interest rate used are such that they do not result in the circumvention of the requirements of section 72(t)(2)(A)(iv) and 72(t)(4) (through the use of an unreasonable interest rate or unreasonable life expectancies) and that the proposed method of payments, as modified, is reasonable. Therefore, 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.

This ruling is based on the assumption that IRA W meets the requirements of Code section 408 at all times relevant to the proposed transaction.

A copy of this letter has been sent to your authorized representative in accordance with the power of attorney on file in this office.

Sincerely yours,

(Signed) John Swieca

John Swieca
Chief, Employee Plans
Technical Branch 1

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose

cc: