'. Internal Revenue Service
Significant Index No. 72.20-04

Department of the Treasury

Washington, DC 20224 **200103078**

Contact Person:

Telephone Number:

In Reference to:
T:EP:RA:T:A2

Date:
OCT 25 2000

In re: Private letter ruling on § 72(t)(20)(A)(iv)

This letter is in response to the request of your authorized representative, dated May 11, 2000, for a ruling on your behalf that distributions from your individual retirement accounts (IRAs) would qualify as part of a series of substantially equal periodic payments, provided for under section 72(t)(2)(A)(iv) of the Internal Revenue Code (the "Code").

According to the facts stated in your ruling request, you have a total of five (5) IRAs. You intend to commence annual distributions from IRA#1 and IRA#2 (identified in your letter) which will be determined using the methodology described below. You are currently 55 years old, and your date of birth is January 28, 1945. You intend to commence annual distributions from IRA#1 and IRA#2, or from any one or combination of them within ninety days of the date of this letter.

The method utilized to calculate the distributions is similar to the second method described in Q&A-12 of Notice 89-25, 1989-1 C.B. 662. The aggregate account balance of IRA#1 and IRA#2 will be determined as of the last day of the month immediately preceding the initial distribution. This aggregate account balance will be amortized, as an end of year payment, over a period of 28.6 years (determined by using your current age applied to Table V of section 1.72-9 of the Income Tax Regulations (the "Regulations")) at an interest rate (rounded to the nearest $^{2}/_{10}$ths of 1 percent) equal to 120 percent of the Federal midterm rate in effect under section 1274(d)(1) of the Code for the month of the initial distribution. The resulting amount will be distributed to you, from IRA #1, IRA #2, or from IRA #1 and IRA #2, as a level annual payment in the 2000 calendar year and in subsequent calendar years.

Section 408(d) of the 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 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) 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% tax on early distributions from qualified plans, including IRA's. The additional tax is imposed on that portion of the distribution that is includible in gross income.

Section 72(t)(2)(A)(i) of the Code provides that section 72(t)(1) shall not apply to distributions which are made on or after the date on which the employee attains age 59½.

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 or her beneficiary.

Section 72(t)(4) of the Code imposes the additional limitation on distributions excepted from the 10% 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 59½, 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.

In the absence of regulations on section 72(t) of the Code, Notice 89-25, published on March 20, 1989, provided 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 which could be used 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.

One method of determining substantially equal annual periodic payments described in Q&A-12 would be to use a method acceptable for purposes of calculating the minimum distributions required under section 401(a)(9) of the Code. For distributions to be made from an individual account, this could be accomplished by dividing the account balance as of a given date by the life expectancy (or joint life and last survivor expectancy of the account owner and beneficiary, if applicable); this would be the amount to be distributed for the first year. The life expectancies to be used are found in Table V (one life) or Table VI (two lives) of section 1.72-9 of the Regulations. Where a one-time calculation is done, the same amount would be distributed in subsequent years.

A second method described in Q&A-12 determines an annual distribution amount by amortizing the taxpayer's account balance over a number of years equal to the life expectancy of the account owner or the joint life and last survivor expectancy of the account owner and beneficiary at an interest rate that does not exceed a reasonable interest rate on the date payments commence. The resulting payment is the amount to be distributed each year. Again, the life expectancies to be used are found in Table V (one life) or Table VI (two lives) of section 1.72-9 of the Regulations.

The third method described in Q&A-12 of Notice 89-25 determines substantially equal annual payments by dividing the account balance by an annuity factor (the present value of an annuity of $1 per year beginning at the taxpayer's age attained in the first distribution year and continuing for the life of the taxpayer) with such annuity factor derived using a reasonable mortality table and using an interest rate that does not exceed a reasonable interest rate on the date payments commence. If substantially equal monthly payments are being determined, the taxpayer's account balance would be divided by an annuity factor equal to the present value of an annuity of $1 per month beginning at the taxpayer's age attained in the first distribution year and continuing for the life of the taxpayer. The annuity factor is calculated using commutation functions derived from a particular mortality table where a particular interest rate is assumed. Because an infinite number of interest rates could be assumed, the number of possible tables of commutation functions is infinite. In the example in Q&A-12 of Notice 89-25, the annuity factor is derived using commutation functions based on the UP-1984 Mortality Table where an interest rate of 8% is assumed.

The methodology you have proposed to use to determine your distributions is consistent with the second method described in Q&A-12 of Notice 89-25. 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 unreasonable high interest rate or an unreasonable life expectancy). Accordingly, we conclude that the method you described 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.

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

Sincerely yours,

Martin L. Pippins

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