200116056

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

SIN: 72.20-04

Person To Contact:

Telephone Number:

Refer Reply To: T:EP:RA:T3

Date: JAN 26 2001

LEGEND:

Taxpayer =

IRA A =

IRA B =

IRA C =

IRA D =

This is in response to a letter dated July 28, 2000, as supplemented letters of October 12, 2000 and November 28, 2000, in which you, through your authorized representative, request rulings under sections 408(d)(6) and 72(t)(4)(A)(ii) of the Internal Revenue Code. The following facts and representations support your ruling request.

280

The Taxpayer maintains four separate IRA's: IRA A, IRA B, IRA C and IRA D. It is represented that IRA's A, B, C and D meet the requirements of section 408(a) of the Code. The IRA's were acquired as community property during the Taxpayer's marriage. The Taxpayer, at age 50, began receiving a series of substantially equal periodic payments from each of the IRA's in 1999. It is represented that the payments from each IRA separately qualify as a "series of substantially equal periodic payments" within the meaning of section 72(t)(2)(A)(iv) of the Code based on the Taxpayer's life expectancy..

On April 13, 1999, the Taxpayer and his former spouse filed for dissolution of the above referenced marriage. The Taxpayer and his former spouse entered into a final separation agreement effective March 31, 2000. It is represented that such a separation agreement is a decree or instrument described in section 71(b)(2)(A) of the Code.

The separation agreement provides that, contingent upon approval by the Internal Revenue Service, IRA's C and D will be transferred to the Taxpayer's former spouse. The payments which the Taxpayer receives from IRA's A and B will continue without change. Taxpayer will no longer receive payments from IRA's C and D which will become the property of his former spouse.

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

1. Division of the IRA's between the Taxpayer and his former spouse, specifically the transfer of IRA's C and D as described above, pursuant to a decree of dissolution instrument defined in section 71(b)(2)(A) of the Code, will be considered nontaxable transfers pursuant to section 408(d)(6) of the Code.

2. Where the annual dollar amount of IRA distributions paid to the Taxpayer with respect to each of retained IRA's A and B remains unchanged, the reduction in total annual payments from all IRA's A, B, C, and D will not be considered a subsequent modification in the series of payments under section 72(t)(4) of the Code and continuing withdrawals at this unchanged annual level from IRA's A and B will not result in the imposition upon the taxpayer of the 10 Percent additional tax under sections 72(t)(1) and (4) of the Code, as applied and calculated pursuant to section 72(t)(4)(A)(ii)(II) of the Code.

Section 408(d)(6) of the Code 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 is treated as an IRA of the former spouse and not of the original IRA holder. Thereafter, such transferred interest is to be treated as maintained for the benefit of the former spouse.

Code section 72(t)(1) provides that if any taxpayer receives any amount from a qualified retirement plan as defined in Code section 4974 (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.

With respect to your first ruling request, 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 and that the transfer is not to be considered a taxable transfer. Thus, with respect to your first ruling request, we conclude as follows:

1. Division of the IRA's between the Taxpayer and his former spouse, specifically the transfer of IRA's C and D as described above, pursuant to a decree of dissolution instrument defined in section 71(b)(2)(A) of the Code, will be considered nontaxable transfers pursuant to section 408(d)(6) of the Code.

With respect to your second ruling request, pursuant to section 408(d)(6), IRA's C and D are no longer the property of the Taxpayer. Further, since Code section 72(t)(2)(A)(iv) requirements were separately determined for IRA's A, B, C and D based on the Taxpayer's life expectancy, the transfer of IRA's C and D will have no effect on compliance with section 72(t)(2)(A)(iv) with respect to IRA's A and B. The same payments continue from IRA's A and B.

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

2. Where the annual dollar amount of IRA distributions paid to the Taxpayer with respect to each of retained IRA's A and B remains unchanged, the reduction in total annual payments to the Taxpayer from all IRA's (A, B, C, and D) will not be considered a substantial modification in the series of payments under section 72(t)(4) of the Code and continuing withdrawals at this unchanged annual level from IRA's A and B will not result in the imposition upon the taxpayer of the 10 Percent additional tax under sections 72(t)(1) and (4) of the Code, as applied and calculated pursuant to section 72(t)(4)(A)(ii)(II) of the Code.

This ruling letter is based on the assumption that IRA's A, B, C and D meet the requirements of Code section 408(a) at all relevant times. It also assumes that the transfer of IRA's C and D to Taxpayer's former spouse will otherwise comply with the requirements of Code section 408(d)(6).

This ruling letter is directed only to the Taxpayer 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
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of the ruling
Notice 437