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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 03 2010

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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A =
B =
C =

Dear

This is in reply to your request for a ruling concerning the income tax treatment of pension benefits received from C.

According to the information submitted, you commenced pension benefits on August 31, 2002. You are entitled to a monthly amount of payable for your life. If B survives after your death, she will receive benefits of per month for the rest of her life. C is a pension plan qualified under section 401(a) of the Internal Revenue Code (Code). You made after-tax contributions of the retirement fund. You were born February 2, B was born September 24, The 1099-R forms you received from 2002 forward incorrectly stated the taxable amount to be the gross amount paid to you. You did not exclude any portion of the amounts received in prior years' income tax returns.

You requested a ruling on two issues related to the income tax treatment of these benefits:

(1) How should you compute the taxable portion of the pension for the current year; and

(2) how should you correct prior years' returns to reflect the correct exclusion amounts for the pension payments for those years.

In addition, you suggested two options for the second issue. The first option is, beginning with the earliest year for which you can file an amended return, to treat the entire amount received as non-taxable, until you have caught up to the appropriate recovery amount for the current year as if you had treated the correct

amount as excludible each year. The second option suggested is to treat the earliest year for which you can file an amended return as the annuity starting date and compute the exclusion amount based on that assumption.

LAW and REGULATIONS

Section 72(b) of the Code excludes from gross income that portion of the payments which represents a return of the investment in the contract. After-tax contributions would constitute the investment in the contract. Section 72(d) of the Code provides that for a pension under a qualified plan, the excludible amount is determined using the Simplified Method, which consists of dividing the investment in the contract by a divisor based on the age of annuitant (or sum of ages of annuitant and survivor in the case of a joint and survivor annuity) at the annuity starting date. The result is the monthly excludible amount. The total amount excludible in a year is this monthly amount times the number of months for which payments were paid to the taxpayer during the year.

Section 1.72-4(b)(1) of the Federal Income Tax Regulations (Regulations) defines the annuity starting date as the first day of the first period for which a payment is received.

Section 1.451-1(a) provides that if income was improperly included in gross income in a prior year and that year is still within the limitation period, the taxpayer may file an amended return correcting the gross income. IRS Publication 17 provides that a tax refund for an overpayment may be claimed by an amended return within 3 years of the date you filed your return or 2 years of the date you paid the tax, whichever is later.

ANALYSIS and COMPUTATION

The annuity starting date is August As of that date, A was age 51, and B was 44. The sum of these ages is 95. Under the Simplified Method of Section 72(d) of the Code, for a joint and survivor annuity where the sum of the ages at the annuity starting date is less than 111, the divisor is 410. The monthly excludible amount is the investment in the contract, (equal to the employee after-tax contributions) divided by 410, or The annual excludible amount, for any year in which you are paid 12 payments is 12 times or These amounts are excludible each year until the total amount excluded under the contract is equal to your original contribution amount, If B survives after your death, she continues taking the same exclusions that you would have been eligible for had you continued receiving the payments.

Nothing in Section 72 of the Code or the Regulations thereunder allows the re-computation of the annual excludible amount based on what amounts were actually excluded from the taxpayer's income. Each year's exclusion is limited to 12 times the monthly excludible amount computed under the Simplified Method.

Therefore, your first suggested option for dealing with the prior tax years is not permissible. In addition, the rules for the Simplified Method require that the computation be based on the ages of the annuitants at the annuity starting date. Therefore, your second suggested option for dealing with the prior tax years is also not permissible. However, even if it were permitted, the sum of the ages of the annuitants would in any case remain less than 111, so the divisor would remain 410, and the monthly excludible amount would be unchanged.

CONCLUSION

With regard to Issue (1), the monthly excludible amount is _____ and the amount excludible for each year for which 12 payments are made is _____. These amounts are excludible each year until the total amount excluded under the contract equals the investment in the contract,

With regard to Issue (2), you may amend income tax returns for prior years to reflect the annual excludible amount of _____ with respect to each year for which an amended return is allowable. Generally an income tax return may be amended within three years of the date upon which the original return was due, or within two years from the date the income tax was paid, whichever is later.

With regard to your suggested options for issue (2), you may not recover all of the amounts that could have been treated as excludible from 2002 to the current year by treating the entire amount as excludible in a single year, nor may you treat a date in a later year as the annuity starting date for purposes of computing the monthly amount excludible under the Simplified Method.

A copy of this ruling should be attached to your Federal income tax return. We have included a copy for that purpose.

If you have any question concerning this matter, please contact

Sincerely,



David M. Ziegler
Manager, Actuarial Group 2
Employee Plans Technical