Uniform Issue List: 72.22-01, 72.22-02

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

200225040

MAR 25 2002

T:EP:RA:T4

Legend:

Individual A =

Individual B =

Trust X =

Plan Y =

Court C =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear Mr. *******:

This is in response to a letter submitted on May 29, 2001, as supplemented on July 29, 2001, February 27, 2002, and March 20, 2002, in which your authorized representative requested a ruling under section 72(t)(1) and 72(t)(4) of the Internal Revenue Code ("Code"). The following facts and representations were submitted to support the ruling request.

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Individual A, whose date of birth was August 25, 1947, is married to Individual B, whose date of birth was June 4, 1953. Neither Individual A nor his spouse have attained age 59 1/2.

Individual A is retired and maintained Trust X which was determined to be exempt under section 501(a) of the Code. Trust X held funds of two retirement plans that were qualified under section 401(a) of the Code. The administrator of Trust X calculated substantially equal periodic payments based on the fair market value of the combined plan assets as of June 7, 1999, to be amortized over the joint life expectancy of Individual A and Individual B, assuming an 8 percent interest rate. Life expectancies were determined using Table VI under section 1.72-9 of the Income Tax Regulations. The combined value of Individual A's benefit under Trust X was Amount 1, and annual distributions under the amortization schedule of Amount 2 commenced in 1999.

In accordance with a letter dated November 19, 2001, the administrator closed out his account in Trust X and transferred all of the assets into a new account in Plan Y which is qualified under section 401(a) of the Code and the related trust exempt under section 501(a).

Individuals A and B are in the process of obtaining a divorce. The divorce proceedings will include a property settlement and are subject to state domestic relations laws in Court C, a state court. Incident to the divorce, Individual A anticipates that his interest in Plan Y will be divided as part of the property settlement. Individual A will treat the division of his benefits as a qualified domestic relations order described in section 414(p) of the Code. The division of the Plan Y assets will be accomplished by a transfer of a portion of the said assets for the benefit of Individual B to a new individual retirement account ("IRA") to be set up and maintained by Individual B.

As a result to this proposed transfer, Individual A's post-divorce interest in Plan Y will be 55 percentage of the value as of the division date. Individual A proposes to reduce his annual periodic payments by a corresponding percentage beginning with the calendar year following the calendar year of the divorce (2002). This reduction will allow Individual A to receive periodic distributions that are reflective of his post-divorce remaining share in Plan Y. The administrator of Plan Y has calculated the proposed change in Individual A's annual distributions and determined that said annual distributions will be based on Amount 3, the value as of the division date. The amortization method will continue to be utilized based on the value after the division, assuming an interest rate of 5 percent, with Individual A's single life expectancy, and Individual A will receive annual distributions of Amount 4 each year thereafter.

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Based on the above facts and representations, Individual A requests the following letter ruling.

That the reduction in the annual distribution from Plan Y to Individual A beginning with the calendar year following the calendar year of the divorce in which the division of the benefits will occur (prior to Individual A's attaining age 59 1/2 and assuming that Individual does not die or become permanently disabled) will not constitute a subsequent modification in his series of periodic payments, as the term "subsequent modification" is used in Code section 72(t)(4), and will not result in the imposition upon Individual A of the 10 percent additional tax imposed by Code section 72(t)(1) pursuant to Code section 72(t)(4)(A)(ii).

Section 72(t)(1) of the Code provides that if any taxpayer receives any amount from a qualified retirement plan as defined in Code section 4974(c) (which include a plan described in section 401(a) which includes a trust exempt from tax under section 501(a)), 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.

Section 72(t)(2)(A)(iv) of the Code provides that a distribution from a qualified retirement plan that is 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 section 72(t)(1) of the Code.

Section 72(t)(4)(A) of the Code 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 1/2, or (ii) before the employee attains age 59 1/2, 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.

Section 72(t)(4)(B) of the Code 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.

Section 402(e)(1)(B) of the Code (concerning rollovers by alternate payees) provides that if an amount is paid or distributed to an alternate payee who is the spouse

or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) (concerning rollovers and exclusion from income) shall apply to such distribution in the same manner as of such alternate payee were the employee.

With respect to your ruling request, Individual A has been receiving annual distributions from Trust X of Amount 2 since 1999, which was calculated to comply with the requirements of section 72(t)(2)(A)(iv). Pursuant to a property settlement which constitutes part of a divorce decree, Individual A will have a substantial percentage of his benefits in Plan Y transferred to an IRA to be set up and maintained by Individual B. Individual A will not have an interest in Individual B's IRA.

Individual A's calendar year 1999, 2000 and 2001 distributions of Amount 2 have been based on the pre-divorce balance in Trust X. The balance will decline substantially to Amount 3 primarily because of the transfer of funds to Individual B's IRA pursuant to the qualified domestic relations order. Distributions of Amount 2 and Amount 4 either were or will be calculated using amortization schedules based on the value of the amounts in Plan Y, using appropriate life expectancies and reasonable rates of interest. After a careful consideration of the facts and the amortization schedules submitted, the Service believes that compliance with Code section 72(t)(2)(A)(iv) for calendar years beginning with 2002, the calendar year following the calendar year of the divorce, will continue if Individual A reduces his annual distribution from Plan Y to Amount 4 in accordance with the amortization schedule submitted.

Thus, with respect to your ruling request, we conclude as follows:

That the reduction in the annual distribution from Plan Y to Individual A beginning with (2002) the calendar year following the calendar year of the divorce in which the division of the benefits will occur (prior to Individual A's attaining age 59 1/2 and assuming that Individual A does not die or become permanently disabled) will not constitute a subsequent modification in his series of periodic payments, as the term "subsequent modification" is used in Code section 72(t)(4), and will not result in the imposition upon Individual A of the 10 percent additional tax under Code section 72(t)(1) pursuant to Code section 72(t)(4)(A)(ii).

This ruling is based on the assumption that Trust X was exempt from tax under section 501(a) of the Code and that Plan Y will be qualified under section 401(a) of the Code at all times relevant to this ruling.

This ruling is also based on the assumption that the domestic relations order is a qualified domestic relations order described in section 414(q) of the Code.

Mr. **********

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

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

If you have any questions please contact me or ********** I.D. # ********, at (***) ********.

Sincerely yours,

/s/ Al Pipkin

Al Pipkin, Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437

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