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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 1 1 2004

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

LEGEND:
Taxpayer A = ***
Taxpayer B = ***
Company M = ***

Dear ***:

This is in response to your letter dated ***, and replaced in its entirety by correspondence dated ***, submitted on your behalf by your authorized representative in which you request a ruling as to whether a proposed method of calculating distributions from individual retirement accounts (IRA) owned by you will constitute a series of substantially equal periodic payments and will not be subject to the 10 percent additional tax imposed on premature distributions under section 72(t) of the Internal Revenue Code (Code). Your ruling request was further supplemented by correspondence dated *** and ***.

The following facts and representations were made in support of your ruling request.

Taxpayer A is *** years old. Taxpayer B is *** years old. Taxpayer A and Taxpayer B each maintain an IRA with Company M, and both are contemplating the commencement of payments from their respective IRAs in a series of substantially equal periodic payments. The proposed annual distribution amount will be determined each year by amortizing the respective IRA account balances as of December 31 over the respective taxpayer's life expectancy using 120 percent of the Federal mid-term rate as of December 31. Taxpayer A's and Taxpayer B's respective life expectancy will be determined using the single life table contained in section 1.401(a)(9)-9, Q&A-1 of the Income Tax Regulations (regulations). Taxpayer A and Taxpayer B propose to use the amortization method on an annually recalculated basis.

For example, Taxpayer A will recalculate the annual distribution for each succeeding year based on the account balance of his IRA as of December 31 of the prior year, determine his life expectancy as of his age in each distribution year using the single life table contained in section 1.401(a)(9)-9, Q&A-1 of the regulations, and 120 percent of the Federal mid-term rate as of December 31 of the prior year. Taxpayer A proposes to perform the above recalculation each and every December 31 going forward through ***.

Taxpayer B proposes to recalculate the annual distribution for each succeeding year based on the account balance of her IRA as of December 31 of the prior year, determine her life expectancy as of her age in each distribution year using the single life table contained in section 1.401(a)(9)-9, Q&A-1 of the regulations, and 120 percent of the Federal mid-term rate as of December 31 of the prior year. Taxpayer B proposes to perform the above recalculation each and every December 31 going forward through year ***.

Based on the foregoing, you request a ruling that the proposed method of determining periodic payments as described herein constitute a series of substantially equal periodic payments under section 72(t)(2)(A)(iv) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA must be included in gross income by the payee or distributee, as the case may be, 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)(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.

Section 72(t)(2)(A)(iv) of the Code provides that section 72(t)(1) shall not apply to distributions that 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 joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Section 72(t)(4) of the Code imposes the additional limitation on distributions excepted from the 10 percent 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 the employee's attainment of age 59 ½, 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 that would have been imposed except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

Section 1.401(a)(9)-9 of the regulations provides tables that are to be used in connection with computations under section 72 and the regulations thereunder. Included in this section are tables giving life expectancies for one life (Q&A-1) and joint life and last survivor expectancies for two lives (Q&A-3).

Notice 89-25 was published on March 20, 1989, and provided guidance, in the form of questions and answers, on certain provisions of the Tax Reform Act of 1986 (TRA '86). In the absence of regulations on section 72(t) of the Code, this notice provides 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 of 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 that must be an interest rate that does not exceed a reasonable interest rate on the date payments commence.

Revenue Ruling 2002-62, 2002-42 I.R.B. 710, which was published on October 21, 2002, modifies Q&A-12 of Notice 89-25. Rev. Rul. 2002-62 provides, among other things, that payments are considered to be substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) if they are made in accordance with the required minimum distribution method, the fixed amortization method or the fixed annuitization method (the three methods described in Q&A-12 of Notice 89-25). The fixed amortization method provides that the annual payment for each year is determined by amortizing in level amounts the account balance over a specified number of years determined using the chosen life expectancy table and the chosen interest rate. Under this method, the account balance, the number from the chosen life expectancy table and the resulting annual payment are determined once for the first distribution year and the annual payment is the same amount in each succeeding year.

Section 2.02 of Revenue Ruling 2002-62 contains rules that apply to each of the three methods of calculating a series of substantially equal periodic payments. Section 2.02 provides, in general, that payments will constitute a series of substantially equal periodic payments if the payments are determined by using: (a) the uniform lifetime tables in Appendix A of Revenue Ruling 2002-62, the single life expectancy table in section 1.401(a)(9)-9, Q&A-1 of the regulations, or the joint and last survivor table in section 1.401(a)(9)-9, Q&A-3 of the regulations; (b) an interest rate that is not more than 120 percent of the federal mid-term rate, and (c) a reasonable manner of determining the account balance.

In this case, Taxpayer A and Taxpayer B propose to determine the annual payments from their respective IRAs using the fixed amortization method as described in Revenue Ruling 2002-62, except that rather than making a fixed annual payment, Taxpayer A and Taxpayer B propose to recalculate the amount of the annual payment from their respective IRAs each year. For subsequent years, Taxpayer A and Taxpayer B will recalculate the annual distribution for each succeeding year based on the account balance of their respective IRA as of December 31 of the prior year, determine their respective life expectancy as of their respective ages in each subsequent year using the single life table contained in section 1.401(a)(9)-9, Q&A-1 of the regulations, and 120 percent of the federal mid-term rate as of December 31 of the prior year.

The life expectancies and 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 unreasonable life expectancies).

Accordingly, the proposed method (as modified) of determining periodic payments 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 assumes that the above IRAs qualify under section 408 of the Code at all relevant times.

This letter ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) 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 ***, ID number ***, SE:T:EP:RA:T2 at ***.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose