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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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WIL: 401.00-00
402.00-00

LEGEND:

Taxpayer A   =   ***

Plan X   =   ***

Amount Y   =   ***

IRA Z   =   ***

Company M   =   ***

Amount N   =   ***

Amount O   =   ***

Dear ***:

This is in response to your letter dated December 17, 2004, supplemented by additional correspondence dated May 12, 2005, submitted on your behalf by your authorized representative, in which you request a ruling as to whether distributions from your individual retirement arrangement (IRA) constitute a series of substantially equal periodic payments that will not be subject to the 10 percent additional tax imposed on premature distributions under section 72(t) of the Internal Revenue Code (Code).

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

Taxpayer A is forty-seven years old. Taxpayer A was a participant in Plan X. Taxpayer A represents that Plan X is a qualified plan as described in Code section 401(a). In December 2004, Taxpayer A received a qualified lump sum distribution from Plan X within the meaning of Code section 402(e)(4)(D). Taxpayer A rolled Amount Y into IRA Z with Company M.

In January 2005, Taxpayer A began taking distributions from IRA Z using a methodology intended to produce a series of substantially equal periodic payments as described in Code section 72(t)(2)(A)(iv). Taxpayer A used the fixed annuitization

method, an account balance of Amount O, and an interest rate of 4.20 percent, which resulted in a monthly distribution equal to Amount N.

Taxpayer A states that the annual distribution amount will be determined each year by dividing the IRA Z account balance as of December 31, by an annuity factor which is equal to the cost of an annual $1 per year life annuity beginning at age forty-seven (Taxpayer A's age as of the date of the first distribution). The annuity factor is derived using the mortality table in Appendix B of Revenue Ruling 2002-62 and an interest rate equal to 120 percent of the Federal mid-term rate as of December 31. The annual distribution will be recalculated each year in the same manner. For example, for each subsequent distribution year, the calculation of the annuity factor, which will be based on the same mortality table, will be based on Taxpayer A's age in that distribution year and an interest rate equal to 120 percent of the Federal mid-term rate as of December 31 of the prior year. Taxpayer A will then calculate the annual payment by dividing the balance of IRA Z by the annuity factor. Even though Taxpayer A proposes to recalculate the amount of the payment for each succeeding year, the method by which the amount of the payment will be determined will remain the same from year to year.

Based on the foregoing, you request a ruling that the method used to determine periodic payments as described herein results in 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, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall 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). Question and Answer-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.

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. Revenue Ruling 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 annuitization method provides that the annual payment for each year is determined by dividing the account balance by an annuity factor that is the present value of an annuity of one dollar ($1) per year beginning at the taxpayer's age and continuing for the life of the taxpayer (or the joint lives of the individual and beneficiary). The annuity factor is derived using the mortality table in Appendix B of Revenue Ruling 2002-62 and using the chosen interest rate. Under this method, the account balance, the annuity factor, the chosen interest rate, 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 table 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 has determined the annual payments from IRA Z in accordance with the fixed annuitization method as described in section 2.01(c) of Revenue Ruling 2002-62, except that rather than making a fixed annual payment, Taxpayer A proposes to recalculate the amount of the annual payment each year. For subsequent years, the

annual distribution amount will be determined by dividing the IRA Z account balance as of the end of December 31 of the prior year by an annuity factor which is equal to the cost of an annual $1 per year life annuity with such annuity factor (based on Taxpayer A's age in that distribution year) calculated using 120 percent of the mid-term Federal rate as of December 31 of the prior year, and the mortality table in Appendix B of Revenue Ruling 2002-62.

The mortality table 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 an unreasonable high mortality table).

Accordingly, the 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 Plan X is qualified under Code section 401(a) at all times relevant to this transaction and that IRA Z meets the requirements of Code section 408(a) at all times relevant to this transaction. This ruling further assumes that the distribution Taxpayer A received from Plan X satisfied the requirements of Code sections 402(a)(4)(D) and 402(c)(4).

This 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 ruling has been sent to your authorized representative pursuant to the provision of a Form 2848 (Power of Attorney) on file in this office.

If you have any questions, please contact ***, SE:T:EP:RA:T2.

Sincerely,

(signed) JOYCE E. FLOYD
Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
    Deleted copy of ruling letter
    Notice of Intention to Disclose Form 437