

Private Letter Ruling 8946045

August 22, 1989

This is in response to a letter dated May 10, 1989, as supplemented by a letter dated July 10, 1989, from your authorized representative requesting a ruling on your behalf regarding the federal income tax consequences of distributions from your individual retirement account (IRA) established with Bank X.

Your authorized representative submitted the following facts and representations. You received a "qualifying lump sum distribution" of approximately \$1,000,000 from a corporate pension plan in which you had previously participated. These funds were deposited into an IRA established with Bank X (hereinafter referred to as the "rollover IRA"). You have two additional IRAs each with account balances of less than \$5,000. Your birthdate is November 26, 1935. During the month of September, 1989, you will begin a series of regular, systematic distributions from your rollover IRA over your life expectancy. Section 72(t) of the Internal Revenue Code imposes a ten percent additional tax on distributions from qualified retirement plans, including IRAs, which you wish to avoid by utilizing the exception for distributions made in substantially equal periodic payments at least annually over the life expectancy of the IRA participant.

Based upon the foregoing facts and representations, your authorized representative requests the following rulings:

- (1) Your receipt of a series of equal annual distributions from your rollover IRA, amortizing the then account balance over your life expectancy at your attained age as of your birthday in the calendar year in which the distributions commence (as provided in Table V of section 1.72-9 of the Income Tax Regulations), using an assumed rate of interest equal to 120 percent of the long term applicable federal rate determined on an annual payment basis and rounded off to the nearest two-tenths of one percent for the month of August 1989, is deemed to be part of a series of substantially equal periodic payments.
- (2) The annual distributions from your rollover IRA described in ruling request one, above, will not be subject to the ten percent additional tax imposed by Section 72(t)(1) of the Code.
- (3) The annual distributions described in ruling request one, above, will qualify as substantially equal periodic payments under Section 72(t)(2)(A)(iv) of the Code.
- (4) You may cease the distributions described in ruling request one, above, after the later of five years from the date of the first payment or your attainment of age 59-1/2 without violating section 72(t)(2)(A)(iv) of the Code.
- (5) You may cease the distributions described in ruling request one, above, and continue to avoid the additional tax imposed by section 72(t)(1) of the Code with respect to payments already received.
- (6) During the period of the distributions described in ruling request one, above, you need not take distributions from your other IRAs or consider the account balances of those IRAs when calculating the amounts of the annual distributions necessary under section 72(t)(2)(A)(iv) of the Code.
- (7) It is permissible to use your attained age as of your birthday in the calendar year in which

the withdrawals commence to calculate the amounts of the annual distributions necessary under section 72(t)(2)(A)(iv) of the Code.

(8) It is permissible to use an interest rate equal to 120 percent of the long-term applicable federal rate determined on an annual payment basis and rounded off to the nearest two-tenths of one percent for the month of August 1989 to calculate amounts of the annual distributions necessary under section 72(t)(2)(A)(iv) of the Code.

Section 72(t)(1) of the Code provides that if a taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), then the taxpayer's tax for the taxable year in which such amount is received shall be increased by 10 percent of the portion of the amount received that is includible in gross income.

Section 4974(c) of the Code defines the term "qualified retirement plan" to include IRAs, among other types of retirement plans.

Section 72(t)(2) of the Code sets forth certain distributions to which the ten percent additional tax does not apply. One of these exceptions, contained in section 72(t)(2)(A)(iv), is for distributions which 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 the joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Section 72(t)(4) of the Code provides that if the series of payments made pursuant to section 72(t)(2)(A)(iv) are substantially modified (other than by reason of death or disability) before the close of the five year period beginning with the date of the first payment and after the employee attains age 59-1/2 or before the employee attains age 59-1/2, then the taxpayer's tax for the first taxable year in which such modification occurs shall be increased by the ten percent additional tax (plus interest) which would have been imposed had the section 72(t)(2)(A)(iv) exception not been applicable.

Section 1.72-9 of the Income Tax Regulations provides actuarial tables which are to be used in connection with computations made under section 72 of the Code.

Q & A-12 of Notice 89-25, 1989-12 I.R.B. 68, provides several methods for complying with the Code section 72(t)(2)(A)(iv) exception. Under one of these methods, payments will be treated as substantially equal periodic payments within the meaning of section 72(a)(2)(A)(iv) if the annual amount to be distributed is determined by amortizing the taxpayer's account balance over a number of years equal to the life expectancy of the account owner or the joint life and last survivor expectancy of the account owner and beneficiary (with life expectancy determined in accordance with proposed section 1.401(a)(9)-1 of the Regulations) at an interest rate that does not exceed a reasonable interest rate on the date distributions commence.

Section 7520(a) of the Code directs the Secretary of the Treasury to prescribe tables for purposes of determining the value of any annuity, any interest for life or a term of years, or any remainder or reversionary interest, as may be

In this case, for purposes of determining and making annual distributions from an IRA, the application of the life expectancies of Table V of section 1.72-9, using your attained age as of your birthday in the calendar year in which distributions commence with an interest rate equal to 120 percent of the long-term applicable federal rate for August 1989 determined on an annual payment basis and rounded off to the nearest two-tenths of one percent will result in

distributions which 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 the joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Accordingly, with respect to ruling requests one, two, three, seven and eight, we conclude that the annual distributions calculated using the method described above, are not subject to the ten percent additional tax imposed on distributions from qualified retirement plans under Code section 72(t).

Section 72(t)(2)(A)(iv) of the Code does not require that plans be aggregated in order to calculate a series of substantially equal periodic payments. Accordingly, with respect to ruling request six, we conclude that distributions from the rollover IRA calculated using the method described above are not subject to the ten percent additional tax imposed on distributions from qualified retirement plans under section 72(t) regardless of whether similar distributions are made from your other IRAs and that the account balances of the other IRAs need not be considered when calculating the amounts of the annual distributions necessary under section 72(t)(2)(A)(iv). This ruling takes no position as to the taxability of distributions from the other IRAs.

Section 6.01 of Rev. Proc. 83-36 provides that a ruling will not be issued in hypothetical situations. Accordingly, since ruling requests four and five are based on distributions which are anticipated but may not take place, it is not appropriate to rule on those requests at this time.

These rulings are based on the following assumptions:

- (1) Your rollover IRA is an IRA described in section 408(a) of the Code.
- (2) Contributions to the IRA were proper under section 402(a)(5) of the Code.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.