

**MEMO# 3307**

December 2, 1991

# **IRS AFFIRMS PRIOR PRIVATE LETTER RULING CONCERNING PREMATURE WITHDRAWAL PENALTY ON SYSTEMATIC PAYMENTS FROM VARIABLE ANNUITY**

December 2, 1991 TO: PENSION MEMBERS NO. 38-91 RE: IRS AFFIRMS PRIOR PRIVATE LETTER RULING CONCERNING PREMATURE WITHDRAWAL PENALTY ON SYSTEMATIC PAYMENTS FROM VARIABLE ANNUITY

Earlier this year, the Internal Revenue Service held in Private Letter Ruling 9115041 that the taxpayer could not avoid the ten-percent penalty under section 72(q) of the Code through the systematic withdrawal option available under his variable annuity contract. The Service determined that payments under this option would not qualify as a series of substantially equal periodic payments, explaining that the exercise of the option would not fix the pattern of future distributions because the taxpayer could change the distribution pattern with regard to the amount and duration at his request. (See Institute Memorandum to Pension Members No. 19-91, dated May 16, 1991.) In the attached private letter ruling, the Service considered a request for reconsideration of the conclusion reached in the earlier ruling on the grounds that (1) its stated rationale is inconsistent with the treatment of early distributions from qualified plans (including IRAs), and (2) there is no statutory requirement that the periodic payments must be fixed for future periods. The Service affirmed the conclusion reached in the earlier private letter ruling, citing legislative history requiring a scheduled series of substantially equal periodic payments. We will keep you informed of further developments. Kathy D. Ireland Associate Counsel - Pension Attachment

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