

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

N o t i c e

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UIL: 72.16-00

November 26, 1998

Subject: CHANGE IN LITIGATING POSITION Cancellation Date: November 26, 1999

The purpose of this Notice is to advise District Counsel attorneys of a change in Counsel's litigating position concerning interest accrued on a loan to a participant from a qualified plan following certain events that are treated as distributions under IRC §72(p). Unless an exception applies under IRC §72(p)(2), IRC §72(p) requires that participant loans from qualified plans be treated as distributions ("deemed distributions"). A taxpayer's claim that interest accruing after the date of a deemed distribution does not constitute an additional deemed distribution should not be challenged. See Garcia v. Commissioner, T.C. Memo. 1998-203. Additionally, District Counsel attorneys should take action necessary to eliminate any additional tax asserted by the Service concerning this interest. This position follows proposed Treasury Regulation §1.72(p)-1, Q&A-19(a), published on January 2, 1998 ("[A] loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded in applying section 72 to the participant or beneficiary.").

If you have any questions regarding this notice, please contact Amy L. Speetjens at (202) 622-6090.

/s/

MARY OPPENHEIMER
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(Employee Benefits and Exempt
Organizations)

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