

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EB:QP2-COR-121111-00

Date:

October 26, 2000

State = [REDACTED]

Plan = [REDACTED]

Dear [REDACTED]

This responds to your letter of October 10, 2000 to Cheryl Press of the Office of Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. You reported that a county within State which had adopted State's section 457(b) Plan, an eligible deferred compensation plan, has recently contracted with a private company to perform the services previously done by the county's water department employees. The private contractor has agreed to hire the county's former water department employees for at least a minimum period and to provide them with equivalent benefits to those they had enjoyed as county employees.

You asked whether these former employees could continue to contribute (and defer) a portion of their compensation to Plan under section 457(b) as they had when they were county employees. Since we do not have a copy of Plan, or a request for a private ruling filed in accordance with Revenue Procedure 2000-1, 2000-1 I.R.B. 4, we are unable to provide a definitive ruling or opinion concerning this issue. However, we can provide you this general information letter¹ concerning the available provisions of section 457 defining an eligible employer, who is permitted to offer a section 457(b) plan to its employees, which we hope will be helpful to you.

¹ Section 2.04 of Revenue Procedure 2000-1 defines an "information letter" as a statement issued by the Internal Revenue Service that calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. This section also provides that an information letter is advisory only and has no binding effect on the Service.

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Section 457(b)(1) of the Internal Revenue Code (the "Code") requires an "eligible deferred compensation plan" to be a plan established and maintained by an eligible employer in which only individuals who perform service for the eligible employer may be participants. Section 457(e)(1)(A) defines the term "eligible employer" as (i) a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State, and (ii) any other organization (other than a governmental unit) exempt from tax under Subtitle A of the Code. Section 1.457-2(c) of the Income Tax Regulations generally defines a state as including (i) the 50 states of the United States and the District of Columbia, (ii) a political subdivision of a state, or (iii) any agency or instrumentality of a state or political subdivision of a state.

From these provisions, it appears that former employees of a state or local governmental agency who are now employees of a private company can no longer actively participate in that state's eligible deferred compensation plan.

We hope the general information supplied in this letter is helpful. If you need further assistance on either the substantive issue or the procedure for requesting a ruling, please contact John Tolleris of my staff at (202) 622-6060.

Sincerely,

Robert D. Patchell
Acting Chief, Qualified Plans Branch 2
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities)