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March 29, 2001

Dear Mr. [REDACTED]:

This responds to your recent letter to the IRS Technical Publications Branch, requesting the Internal Revenue Service to publish and distribute a new publication regarding eligible deferred compensation plans described in section 457 of the Internal Revenue Code. Due to its subject matter, your letter was sent to this office for response. You also asked whether the 10% early withdrawal penalty applies to distributions made from eligible section 457 plans to employees who retire before age 59½. We are pleased to provide general information on this subject that may be helpful to you.

Section 72(t) of the Internal Revenue Code governing the "10-percent additional tax on early distributions from qualified retirement plans" generally imposes this 10% early withdrawal penalty on withdrawals a plan participant makes before attaining age 59½ from his account *in a qualified retirement plan as defined in section 4974(c)*, including a tax-sheltered annuity described in section 403(b) or an individual retirement account (IRA) described in section 408(a). Since a section 457 plan is a nonqualified deferred compensation plan which is not included in the section 4974(c) definition, the section 72(t) 10% early withdrawal penalty *does not apply* to any withdrawal that a participant makes from his section 457 plan account after separation from service, whether or not he has attained age 59½.

We have enclosed a copy of Publication 575, "Pension and Annuity Income," that includes a section giving a brief discussion of section 457 deferred compensation plans on page 5. This publication also contains a section, beginning on page 28, that discusses the "Tax on Early Distributions" and the exceptions to this penalty. Since, as you have noted, the IRS does not have a publication devoted exclusively to section 457 plans, we will forward your suggestion for this new booklet to the IRS Technical Publication Branch, that decides which publications the Service should produce.

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We hope the general information furnished with this letter, including the enclosed Publication 575, is helpful. Please contact me or Mr. John Tolleris of my staff at (202) 622-6060 if you have any further question.

Sincerely yours,

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

Enclosure:

Publication 575, "Pension and Annuity Income"

