

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:
(202) 622-6060
Refer Reply To:

CC:TEGE:EB:QP2-CONEX-138128-02

Date:
August 2, 2002

Dear _____ :

This responds to your letter to Charles Rossotti, Commissioner of Internal Revenue regarding section 457 of the Internal Revenue Code ("the Code"). Your letter requests information concerning the status of IRS efforts to publish regulations concerning the provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Pub. L. No. 107-16, that may permit some changes to ongoing distributions from section 457 deferred compensation plans, effective earlier this year.

We do not have sufficient information regarding your employer's section 457 plan, including a copy of the plan, to discuss your case and options under that plan. However, we are providing some general information below.

You referred to the need for guidance on the revised distributions provisions applicable to section 457 plans, enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. No. 107-16, and effective for distributions made after December 31, 2001. This new law provides that, after 2001, distributions from a state or local governmental section 457 plan are included in income when paid, rather than when "paid or made available." That would authorize, but not require, section 457 plans sponsored by state or local governmental entities to provide more flexible distribution provisions, if the plans are revised to permit such flexibility. However, since EGTRRA did not change the previous laws that make distributions from an eligible plan of a tax-exempt organization includible in income when "paid or made available," a participant in a section 457(b) plan of a non-governmental tax-exempt entity still cannot revise a previous irrevocable election.

Concerning regulations to implement this and other revisions made by EGTRRA, the IRS recently published proposed regulations that provide guidance regarding numerous issues affecting 457 plans, including the revised distribution provisions. We have enclosed a copy of these proposed regulations. In a process legally required under the Administrative Procedure Act, the Internal Revenue Service is now receiving public comment concerning these proposed regulations and will be holding a public hearing regarding them on August 29. After reviewing the comments received before and at this hearing, the IRS will promulgate final regulations implementing the EGTRRA changes.

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Section 8.a. of the preamble to the attached proposed regulations notes, “EGTRRA substantially altered the taxation of distributions from an eligible governmental plan by providing that amounts held under such an eligible plan are not included in a participant’s or beneficiary’s gross income until distributed. The proposed regulations would interpret this EGTRRA change as applying to all participants in an eligible governmental plan. Thus, an eligible governmental plan *may* permit participants who are currently entitled to be paid after 2001 to change their previously irrevocable payment elections.” However, as noted above, EGTRRA does not require a governmental plan to permit its participants to make such changes.

We hope the enclosed proposed section 457 regulations will be helpful to you. If you need further information, please contact _____ of my staff at (202) 622-6060.

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

Enclosure: