



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

September 23, 2004

Number: **INFO 2004-0207**  
Release Date: 12/31/04  
UIL No. 457.10-00  
CC:TEGE:EB:QP2:  
GENIN-146523-04

Dear

This responds to your recent letter to me, requesting a private letter ruling about rolling over a distribution you received from your section 457(f) plan account into an individual retirement account (IRA).

We are unable to issue the ruling you request, because the statutory rollover rules under section 402(c) of the Internal Revenue Code permit only certain distributions from eligible retirement plans such as qualified pension plans, IRAs, section 403(b) tax-sheltered annuities or eligible section 457(b) plans of state or local governmental employers to be rolled over into an IRA or another eligible retirement account. The tax law enacted by Congress permits no amount distributed from any ineligible section 457(f) plan of any employer nor any distribution from an eligible section 457(b) plan of a tax-exempt organization to be rolled over into an individual retirement account (IRA) or another eligible retirement plan, unlike similar distributions from section 457(b) plans sponsored by state and local governments. These are provisions that the Congress enacted into law as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. No. 107-16. This law provides that, after 2001, individuals may roll over certain distributions from governmental (but not tax-exempt entities') section 457(b) plans qualifying as "eligible rollover distributions" into an eligible retirement plan.<sup>1</sup> Because these are statutory provisions, the IRS cannot change them nor can it rule otherwise in a private letter ruling unless the Congress enacts a statutory amendment to these rollover rules.

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<sup>1</sup> An eligible rollover distribution is any distribution from a governmental section 457(b) plan, a qualified pension plan (including a section 401(k) plan), or a section 403(b) tax-sheltered annuity that is neither 1) a minimum required distribution nor 2) one of a series of substantially equal periodic payments made over the participant's life expectancy or a specified period of 10 or more years.

In your letter, you mentioned a private letter ruling that the IRS recently issued to a federal credit union. In this ruling, a copy of which we have enclosed, the IRS simply states that the credit union's nonqualified deferred compensation plan is not subject to the rules under section 457(b) of the Code, governing the income tax treatment of eligible deferred compensation plans of tax-exempt organizations and state and local government entities. This ruling letter does not address rollovers.

I should also mention that section 11.02 of Revenue Procedure 2004-1, 2004-1 I.R.B. 1, 45 states, "a taxpayer may not rely on a letter ruling issued to another taxpayer" pursuant to section 6110(k)(3) of the Code. The guidance contained in a private letter ruling applies only to the person who requested and received it.

Finally, we are unable to issue the private letter ruling you requested because your request does not meet the requirements established in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 for a private ruling letter request. We have enclosed a copy of this document which sets forth the requirements you must comply with before we could consider your request, including payment of the required user's fee, generally \$6,000.00 but reduced to \$500.00 for taxpayers who certify that they have received under \$250,000 gross income as reported on their most recent annual tax return.

For your information, I have enclosed a copy of the portion of the Congressional Committee report concerning the EGTRRA which clarifies that the rollover provisions concern only governmental section 457(b) plans. I hope this information, including the Congressional report, is helpful. If you need more information, please contact me or  
at

Sincerely,

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

Enclosure (3)