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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP2
PLR-145997-08

Date:
April 20, 2009

Legend

Taxpayer T =

College C =

Dear :

This responds to your authorized representative's original letter and subsequent correspondence, on your behalf, requesting a ruling concerning the maximum amount that you, Taxpayer T, may defer under the Internal Revenue Code (the "Code") to your accounts under your employer's (College C) sections 403(b) and 457(b) plans.

Taxpayer T is the president of College C, which is represented to be an educational institution described in section 170(b)(1)(A)(ii) of the Code and a tax-exempt educational institution described in section 501(c)(3) of the Code. He has been employed by College C for 24 years. College C sponsors and maintains retirement plans under sections 403(b) and 457(b). Although the section 403(b) plan is available to all College C's employees, its section 457(b) plan is only available to T.

T wishes to defer the maximum amount allowable under the Code to his accounts in both College C's sections 403(b) and 457(b) plans in 2008, the year when T submitted his private ruling request. In 2008, the maximum amount of compensation that a participant could generally defer under the Code was \$15,500 for both sections 403(b) and 457(b) plans. T also wishes to defer up to an additional \$3,000 in special catch-up contribution in 2008 to his section 403(b) plan account under section 402(g)(7) of the Code since he had worked for College C for more than 15 year and since he had

not previously made any catch-up contribution under this provision, although he had previously contributed a total of slightly less than \$107,000 in elective deferrals into his account in College C's section 403(b) plan during his career with this employer. Both College C's plans described under sections 403(b) and 457(b) provide that a participant may defer the maximum amount possible under their respective sections of the Code.

T has requested the Service to issue the following three rulings:

1. T may make an elective deferral to College C's section 457(b) plan of the maximum amount of \$15,500 for calendar year 2008 and may also defer to College C's section 403(b) plan the maximum amount of \$15,500 for calendar year 2008 for a combined total of \$31,000 to both plans.
2. Because T has performed at least 15 years of full-time service with College C, a qualified organization described in section 402(g)(7)(B), T is eligible to make a special catch-up contribution of \$3,000 for 2008 to College C's section 403(b) plan, thus increasing the permissible limit of his elective deferral to his account in its section 403(b) plan to \$18,500 for 2008.
3. If T is eligible to defer \$18,500 to College C's section 403(b) plan in 2008, T may still defer \$15,500 to his account in its section 457(b) plan for 2008.

Section 402(g) of the Code provides the limitations on exclusions for elective deferral contributions to certain plans such as section 403(b) plans. Section 402(g)(1)(A) provides that, in general, the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount.

Section 402(g)(1)(B) of the Code provides that the applicable dollar amount is the amount determined in accordance with a specific table. For 2008, the applicable dollar amount is \$15,500.

Section 402(g)(3) of the Code provides that the term "elective deferrals" means, with respect to any taxable year, the sum of (A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (e)(3), (B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B), (C) any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement, and (D) any elective employer contribution under section 408(p)(2)(A)(i).

Section 402(g)(4) of the Code provides for an increase in the limit for amounts contributed under a section 403(b) contract and that for taxable years beginning after December 31, 2006, the Secretary shall adjust the \$15,000 amount under section

402(g)(1)(B) at the same time and generally in the same manner as under section 415(d). For 2008, the applicable dollar amount is \$15,500.

Section 457(b)(2) of the Code provides that the term “eligible deferred compensation plan” means a plan established and maintained by an eligible employer which provides that (except as provided in paragraph (3)) the maximum amount which may be deferred under the plan for the taxable year (other than rollover amounts) shall not exceed the lesser of the applicable dollar amount or 100 percent of the participant’s includible compensation.

Section 457(b)(3) of the Code provides that an “eligible deferred compensation plan” may provide that for one or more of the participant’s last three taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in section 457(b)(2) shall be the lesser of (A) twice the dollar amount in effect under subsection (b)(2)(A), or (B) the sum of (i) the plan ceiling established for purposes of paragraph (2) for the taxable year (determined without regard to this paragraph), plus (ii) so much of the plan ceiling established for purposes of paragraph (2) for taxable years before the taxable year as has not previously been used under paragraph (2) or this paragraph.

Section 457(c) of the Code provides that the maximum amount of compensation of any one individual that may be deferred under section 457(a) may not exceed the applicable dollar amount under section 457(b)(2)(A) (which was \$15,500 for 2008) as modified by the adjustment discussed above provided under section 457(b)(3). Section 457(c), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), effective after December 31, 2001, no longer imposes any requirement to reduce the maximum amount that may be deferred for an individual under section 457(b) by any amount contributed for such individual to a different type of retirement savings plan such as a section 403(b) plan.

Section 457(e)(15) of the Code provides the applicable dollar amount for elective deferrals to eligible deferred compensation plans. Section 457(e)(15)(A) provides that the applicable dollar amount shall be the amount determined in accordance with a specific table. Section 457(e)(15)(B) provides that for taxable years beginning after December 31, 2006, the Secretary shall adjust the \$15,000 amount under section 457(e)(15)(A) at the same time and generally in the same manner as under section 415(d). For 2008, the applicable dollar amount is \$15,500.

Section 402(g)(3) of the Code defines the term “elective deferrals.” For purposes of the definition, it includes employer contributions to purchase an annuity contract under section 403(b) under a salary reduction agreement; it does not include deferrals made to a retirement plan as described in section 457(b) of the Code. Elective deferral contributions to an arrangement described in section 403(b) thus would not be aggregated with deferral contributions to an arrangement described in section 457(b).

Concerning T's special catch-up contribution under section 402(g)(7)(A), section 1.403(b)-4(c)(3)(i) of the Income Tax Regulations provides that in the case of a qualified employee of a qualified organization for whom the basic section 403(b) elective deferrals for any year are not less than the applicable dollar amount under section 402(g)(1)(B), the section 403(b) elective deferral limitation of section 402(g)(1) for the taxable year of the qualified employee is increased by the least of (A) \$3,000; (B) the excess of \$15,000 over the total elective deferrals described in section 402(g)(7)(A)(ii) made for the qualified employee by the qualified organization for prior years; or (C) the excess of \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over the total elective deferrals (as defined at section 1.403(b)-2) made for the employee by the qualified organization for prior years.

Section 1.403(b)-4(c)(3)(ii)(A)(1) of the Regulations provides that for purposes of this paragraph (c)(3), *qualified organization* includes an eligible employer that is an educational organization described in section 170(b)(1)(A)(ii) of the Code.

Section 1.403(b)-4(c)(3)(iii) of the Regulations provides that for purposes of this paragraph (c)(3), *qualified employee* means an employee who has completed at least 15 years of service taking into account only employment with the qualified organization. Thus, an employee who has not completed at least 15 years of service taking into account only employment with the qualified organization is not a qualified employee.

It has been represented that T has worked for College C for 24 years. For purposes of this ruling, we assume that College C is an educational institution as described in section 170(b)(1)(A)(ii) of the Code. The total amount that T has deferred to College C's 403(b) plan during his career is slightly less than \$107,000.00. It is also represented that throughout the applicable 15-year period for purposes of the additional \$3,000 catch-up contribution, T was a full-time employee of College C.

The amount which T has contributed by elective deferral to College C's section 403(b) plan in the past (slightly under \$107,000.00) would not prevent him from making the \$3,000 elective deferral catch-up contribution to this plan in 2008 under section 1.403(b)-4(c)(3)(i) of the regulations. Thus T's total elective deferral contributions to College C's section 403(b) plan consisting of his section 402(g)(7) catch-up contribution combined with the general elective deferral contribution limit of section 402(g)(1) of the Code may equal \$18,500 for 2008.

Based on the information, documents, and representations presented to us, we rule as follows:

1. Taxpayer T may defer to the section 457(b) plan maintained by College C the maximum amount of \$15,500 for calendar year 2008 and also defer to the

section 403(b) plan maintained by College C the maximum amount of \$15,500 for calendar year 2008, for a total of \$31,000 to both plans, provided his includible compensation in 2008 is sufficient for both contributions combined.

2. Because Taxpayer T has at least 15 years of service with a qualified organization and because of his prior elective deferral contribution history relating to College C's section 403(b) plan, he is eligible to make a catch-up contribution of \$3,000 to the section 403(b) plan and this catch-up contribution can be added to the general section 403(b) limit to increase the total amount he can contribute to the section 403(b) plan in 2008 to \$18,500.
3. Even though Taxpayer T is eligible to defer \$18,500 to College C's section 403(b) plan in 2008, T may still defer \$15,500 to his account in its section 457(b) plan for 2008 under section 457(c) as in effect after 2001, provided his includible compensation in 2008 is sufficient for both contributions combined.

This ruling is directed only to the facts of T's case as described in the representations made both with the original ruling request submitted on October 6, 2008, and with the additional information your authorized representative submitted on December 12, 2008. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Cheryl E. Press
Senior Technician Reviewer, Qualified Plans
Branch 2 (Employee Benefits)
(Tax Exempt & Government Entities)

Enclosure (1)