



CHIEF COUNSEL

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

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The Honorable Timothy M. Kaine
United States Senator
121 Russell Road, Suite 2
Abingdon, VA 24210

Attention:

Dear Senator Kaine:

I apologize for the delay in responding to your letter of April 1, 2015, on behalf of your constituent, . and her husband requested assistance in taking advantage of the exclusion from gross income under the Healthcare Enhancement for Local Public Safety (HELPS) Retirees Act, which was enacted in section 845 of the Pension Protection Act of 2006, Public Law 109-280 (PPA '06).

Section 845 of PPA '06 added section 402(l) to the Internal Revenue Code (Code). Section 402(l) permits certain taxpayers to exclude from gross income distributions of up to \$3,000 annually from an eligible governmental plan used to pay qualified health insurance premiums of an eligible retired public safety officer and his or her spouse and dependents. However, wrote that she and her husband, a retired firefighter, cannot take advantage of the exclusion from income under section 402(l) of the Code because her husband's former employer does not participate in the health insurance premium deductions program.

The income tax exclusion under Code section 402(l) applies to an eligible retired public safety officer who elects to have qualified health insurance premiums deducted from amounts distributed from an eligible government plan and paid directly to an insurer. To receive the tax-favored treatment, an eligible governmental plan must pay the amounts directly to an insurer.

This direct payment requirement is explicitly contained in section 402(l)(5)(A) of the Code, which provides that the income tax exclusion shall only apply "if payment of the

premiums is made directly to the provider of the accident or health plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.” The IRS does not have the authority to modify this provision. Only the Congress can make changes to this provision.

We have issued guidance on the eligibility for tax-favored distributions under section 402(l) of the Code. On January 10, 2007, we published Notice 2007-7 (2007-5 Internal Revenue Bulletin 395) to provide guidance to taxpayers who may qualify for special treatment under section 402(l). Q&A-22 of Notice 2007-7 says, to receive tax-favorable treatment under section 401(l) of the Code, the eligible retired public safety officer must elect to have an amount subtracted from the officer’s retirement plan distributions and use that amount to pay qualified health insurance premiums.

The notice further states an employer sponsoring the eligible government plan is not required to offer this election to its retirees. Thus, an eligible government plan can choose whether or not to establish a procedure allowing its retirees to make an election under section 402(l) of the Code. I am enclosing an excerpt of this notice for your reference.

I am sorry my response is not favorable, but I hope this information is helpful. If you have any questions, please contact me or _____ at () _____.

Sincerely,

Joyce I. Kahn
Branch Chief, Qualified Plans Branch 4
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure