



OFFICE OF THE CHIEF COUNSEL

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

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Dear \_\_\_\_\_ :

I'm responding to your May 29, 2019, inquiry to IRS Commissioner Charles Rettig. Because you asked about retirement plans, your inquiry was referred to my office. You explained your organization processes payroll for certain public employers whose employees are members of a state pension program. The pension agency has identified refunds of member contributions that are being sent to the members' last known employers. You asked whether the pension agency itself or the last known employer should have the burden of refunding these contributions.

In a general information letter such as this, we cannot comment on the tax treatment of particular retirement plans. Also, the law generally prohibits us from disclosing return information without the written authorization of the taxpayer affected by the disclosure. If you have questions or concerns about actions that are being taken by a specific retirement plan, you may want to start by contacting the plan administrators.

A tax-qualified retirement plan that fails to operate within its written terms or that fails to comply with certain requirements under the Internal Revenue Code (Code) may lose its tax-qualified status. This would result in adverse tax consequences for all plan participants in the plan. However, it may be possible for a plan to preserve its tax-qualified status by correcting such a failure.

The Internal Revenue Service published Revenue Procedure 2019-19, 2019-19 I.R.B. 1086 which contains a system of correction programs for plan sponsors of retirement plans that are intended to satisfy the requirements of Section 401(a), 403(a), 403(b),

408(k), or 408(p) of the Code, but that have not met these requirements for a period of time. This system, the Employee Plans Compliance Resolution System (EPCRS), permits plan sponsors to correct these failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis. (I'm enclosing a copy of Revenue Procedure 2019-19 for your convenience.)

Both the availability of EPCRS to a particular plan and the appropriate method of correcting a qualification failure depend on the facts and circumstances relating to that plan. In addition, while EPCRS provides that in all cases a correction should be reasonable and appropriate for the qualification failure, it also provides that, depending on the nature of the failure, there may be more than one reasonable and appropriate way for a plan sponsor to correct the failure.

I hope this information is helpful. If you have questions, please contact me at  
or at .

Sincerely,

Victoria A. Judson  
Associate Chief Counsel  
Employee Benefits, Exempt Organizations, and  
Employment Taxes

Enclosure