



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

OFFICE OF THE CHIEF COUNSEL

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Via Regular Mail

Attention: Section 415(b)(1)(B) Limitations

Dear _____ :

This letter responds to your request for information dated June 14, 2019, on how compensation limitations under section 415 of the Internal Revenue Code (Code) could apply to your pension benefits.

Your letter states that you were a union member covered by your employer's collectively bargained pension plan, and that your employer has requested repayment of an overpayment of your pension because of section 415 of the Code. You correctly point out that section 4.72.6.1.1(6) of the Internal Revenue Manual (IRM) states that the compensation limit of Code section 415(b)(1)(B) does not apply to a multiemployer plan¹ and certain collectively bargained plans.

The key word in IRM section 4.72.6.1.1(6) is "certain." The applicable rule is included in Code section 415(b)(7). That section provides that the compensation-based limitation under Code section 415(b)(1)(B) (100 percent of average compensation for the highest 3 years) "shall not apply to benefits with respect to a participant under a defined benefit plan (other than a multiemployer plan)—

“(A) which is maintained for such year pursuant to a collective bargaining agreement between employee representatives and one or more employers,

“(B) which, at all times during such year, has at least 100 participants,

¹ We infer from your letter that you are not covered by a multiemployer plan (that is, a plan maintained by a joint board of trustees consisting of union representative and employer representatives that covers employees of a group of unrelated employers). Code section 415(b)(11) provides that the compensation-based limitation of Code section 415(b)(1)(B) does not apply to participation in a multiemployer plan, and the rules of Code section 415(b)(7) do not apply to multiemployer plans.

“(C) under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement,

“(D) which provides that an employee who has at least 4 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions, and

“(E) which requires, as a condition of participation in the plan, that an employee complete a period of not more than 60 consecutive days of service with the employer or employers maintaining the plan.”

Accordingly, the Code section 415(b)(1)(B) limitation would apply if your pension plan did not meet each of the requirements of Code section 415(b)(7) listed above. You have not given us enough information about your plan for us to be able to tell whether your plan meets all of those requirements.

Even if your pension plan meets all of the requirements in Code section 415(b)(7)(A) through (E) listed above, the compensation-based limitation of section 415(b)(1)(B) may still apply to you. Code section 415(b)(7) provides that the Code section 415(b)(1)(B) limitation applies to a participant under a plan that meets each of the requirements of Code section 415(b)(7)(A) through (E) (i) if the participant’s compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in the plan, and (ii) for any period for which the participant participates in another plan maintained by the same employer. Therefore, if your compensation was above average for plan participants during a relevant period, or if you participated in another plan maintained by your employer (for example, a 401(k) plan), the compensation-based limitation of section 415(b)(1)(B) applies to you.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2019-1, §2.04, 2019-1 IRB 9 (Jan. 2, 2019). We hope this information is helpful. If you need additional information, please call _____ at () _____.

Sincerely,

Linda S.F. Marshall
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Qualified Plans Branch 1
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(Employee Benefits, Exempt Organizations, and
Employment Taxes)