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Department of the Treasury
Washington, DC 20224

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, ID No.

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Refer Reply To:
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PLR-T-103087-15

Date:
March 30, 2015

State A =
County B =
Plan C =
Plan D =

Dear :

This letter is in response to correspondence, dated May 14, 2014, submitted on behalf of County B by its authorized representatives, requesting a ruling with respect to the federal income tax consequences of an elective plan-to-plan transfer of assets from Plan C to Plan D by employees who have severed employment with County B.

The following facts and representations are submitted under penalties of perjury in support of your request:

County B is a county in State A. County B established and maintains Plan D, a defined benefit plan that is a governmental plan within the meaning of section 414(d) of the Internal Revenue Code ("Code"), and a qualified plan within the meaning of section 401(a) of the Code. Plan D covers employees who: (1) were hired before October 1, 1994 and work in a permanent position for County B; (2) work in a union represented, permanent position for County B as a sworn deputy sheriff and any County B correctional staff or officer if designated by the Chief Administrative Officer to participate in Plan D; (3) work in a union represented, permanent position for County B as a sworn police officer; or (4) work in a union represented, permanent position for County B as a paid firefighter, paid fire officer, or paid rescue service personnel. Those employees hired after September 30, 1994, as union represented employees in categories (2), (3), or (4) who transfer to non-union positions, continue to participate in Plan D.

County B also established and maintains Plan C, a defined contribution plan that is a governmental plan within the meaning of section 414(d) of the Code, and a qualified plan within the meaning of section 401(a) of the Code. Plan C covers regular, full-time or part-time employees who: (1) were hired after October 1, 1994 and are (a) unrepresented employees, or (b) non-public safety employees that are members of a specified collective bargaining unit; (2) are sworn police officers who have reached the maximum credited service under Plan D; or (3) were hired before October 1, 1994, are otherwise eligible for coverage under Plan C and wish to irrevocably elect to transfer to Plan C.

County B intends to amend the County B Code to permit participants of Plan C who have severed employment with County B to make a one-time, irrevocable election to make a plan-to-plan transfer of their account balance under Plan C to Plan D in order to receive an annuity benefit under Plan D. The transfer would occur prior to a participant's commencement of benefits under Plan C.

After the transfer from Plan C to Plan D, the amount transferred would be immediately annuitized and paid to the participant under Plan D as a single life annuity or a joint and survivor annuity with a spouse, domestic partner, or child as a contingent annuitant. Subsequent to the transfer from Plan C, no other contributions will be made to Plan D by the participant or County B.

Based on the above facts and representations, you request a ruling that the transfer of assets from Plan C to Plan D after a participant's severance from employment, regardless of whether the participant has an existing Plan D benefit -

1. Is a permissible plan transfer that will not result in taxation to the participant under sections 72(t), 401(k), or 402 of the Code;

2. Will not result in constructive receipt of such amounts by an affected participant under section 72(t) or 401(k) of the Code; and

3. Will not be subject to the limitations on benefits under section 415(b) of the Code.

Section 72(t) of the Code provides for an additional tax on any amount received from a "qualified retirement plan" (as defined in section 4974(c) of the Code, which includes plans described in section 401(a) of the Code). The additional tax for the taxable year in which such amount is received is equal to 10 percent of the portion of such amount which is includible in gross income, unless one or more of the exceptions enumerated in section 72(t)(2) of the Code applies.

Section 401(a) of the Code provides that a trust created or organized in the United States and forming a part of a qualified stock bonus, pension, or profit sharing plan of

an employer constitutes a qualified trust only if the various requirements set out in section 401(a) of the Code are met.

Section 401(a)(16) of the Code requires that a qualified plan not provide for benefits or contributions that exceed the limitations of section 415 of the Code.

Section 401(a)(31) of the Code requires that a participant in a qualified plan be permitted to elect to have a distribution made in the form of a direct rollover to another eligible retirement plan if the distribution qualifies as an eligible rollover distribution. Section 1.401(a)(31)-1, A-15, of the Income Tax Regulations (the "Regulations") provides that, for purposes of applying the plan qualification requirements of section 401(a), a direct rollover is a distribution and rollover of the eligible rollover distribution (rather than a transfer of assets and liabilities).

Section 401(a)(31)((D) of the Code defines the term "eligible rollover distribution," for purposes of section 401(a)(31), as having the meaning set forth in section 402(f)(2)(A) of the Code. Section 402(f)(2)(A) of the Code, referring to section 402(c)(4) of the Code, defines the term "eligible rollover distribution," for purposes of a section 401(a) qualified plan, as any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, except that such term shall not include: (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or for a specified period of 10 years or more; (B) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; or (C) any distribution which is made upon hardship of the employee.

Section 401(a)(31)(E) of the Code defines the term "eligible retirement plan," for purposes of section 401(a)(31) of the Code, as having the same meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit acceptance of rollover distributions. Section 402(c)(8)(B) of the Code otherwise defines the term "eligible retirement plan" to include a qualified trust.

Section 1.401(a)(31)-1, A-2, of the Regulations explains that while section 401(a)(31)(D) of the Code limits the types of qualified trusts that are treated as eligible retirement plans to defined contribution plans that accept eligible rollover distributions, a plan is permitted, at a participant's election, to make a direct rollover to any type of eligible retirement plan, as defined in section 402(c)(8)(B) of the Code, including a defined benefit plan. Accordingly, a direct rollover from a qualified defined contribution plan to a qualified defined benefit plan is permitted under section 401(a)(31) of the Code, but not required.

Section 401(k) of the Code provides the rules relating to cash or deferred arrangements. Section 1.401(k)-1(a)(2) of the Regulations provides that, subject to certain exceptions, which are inapplicable in this case, a cash or deferred arrangement is an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a) of the Code.

Section 1.401(k)-1(a)(3)(i) of the Regulations generally defines a cash or deferred election as any direct or indirect election (or modification of an earlier election) by an employee to have the employer either: (A) provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available, or (B) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

Section 402(a) of the Code generally provides that any amount actually distributed to any recipient by any employees' trust described in section 401(a) of the Code, which is exempt from tax under section 501(a) of the Code, shall be taxable to the recipient in the taxable year of the distribution under section 72 of the Code (relating to annuities).

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Under section 411(c)(2)(B) of the Code, in the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) of the Code (as of the determination date).

Section 411(c)(2)(C) of the Code defines the term "accumulated contributions" as the mandatory contributions made by the employee, increased by interest. With respect to periods during plan years beginning on or after January 1, 1988, section 411(c)(2)(C)(iii) specifies that the interest is determined using the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of the Code for the first month of each plan year) for the period beginning with the first plan year to which section 411(a)(2) of the Code applies (by reason of the applicable effective date) and ending on the date the determination is being made, and using the interest rate under section 417(e)(3) of the Code for the period between the determination date and the date on which the employee attains normal retirement age.

Section 411(c)(3) of the Code requires that, if the accrued benefit derived from employee contributions is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by the employee shall be the actuarial equivalent of the amount determined under section 411(c)(2) of the Code.

Section 411(e) of the Code provides that a governmental plan (within the meaning of section 414(d) of the Code) is treated as meeting the requirements of section 411, provided the governmental plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) of the Code as in effect on September 1, 1974.

Section 415(a)(1)(A) of the Code provides that a defined benefit plan is not a qualified plan if the plan provides for the payment of benefits with respect to a participant which exceed the limitation of section 415(b) of the Code. Section 415(b)(1) of the Code prescribes limitations that are based on the annual benefit determined under section 415(b)(2) of the Code. Section 415(b)(2)(B) of the Code provides for adjustments, in accordance with regulations, to the benefit determined under the plan if employees contribute or make rollover contributions to the plan.

Section 1.415(b)-1(b)(1) of the Regulations prescribes rules for the determination of the annual benefit for purposes of section 415(b) of the Code. Under section 1.415(b)-1(b)(1)(ii) of the Regulations, the annual benefit, for purposes of determining the section 415(b) limitation, does not include the annual benefit attributable to either employee contributions or rollover contributions (as described in section 401(a)(31) and section 402(c)(1) of the Code). Furthermore, pursuant to section 1.415(b)-1(b)(1)(ii), the treatment of transferred benefits is determined under the rules of section 1.415(b)-1(b)(3) of the Regulations.

Under section 1.415(b)-1(b)(2)(v) of the Regulations, the annual benefit attributable to rollover contributions is determined by using the factors applicable to mandatory employee contributions as described in sections 411(c)(2)(B) and (C) of the Code and regulations promulgated under section 411 of the Code, regardless of whether the requirements of sections 411 and 417 of the Code apply to the plan. Thus, in the case of rollover contributions from a defined contribution plan to a defined benefit plan to provide an annuity distribution, the annual benefit attributable to those rollover contributions, for purposes of section 415(b), is determined by applying the rules of section 411(c) as described in section 1.415(b)-1(b)(2)(iii), regardless of the assumptions used to compute the annuity distribution under the plan and regardless of whether the plan is subject to the requirements of sections 411 and 417 of the Code. Accordingly, in such a case, if the plan uses more favorable factors than those specified in section 411(c) to determine the amount of annuity payments arising from rollover contributions, the annual benefit under the plan would reflect the excess of those

annuity payments over the amounts that would be payable using the factors specified in section 411(c).

Section 1.415(b)-1(b)(3)(ii) of the Regulations provides that where, as described in section 1.411(d)-4, Q&A-3 (c) of the Regulations (permitting certain elective transfers of distributable benefits), a distributable benefit is transferred to a defined benefit plan from either a defined contribution plan or a defined benefit plan, the amount transferred is treated as a benefit paid from the transferor plan and the annual benefit provided by the transferee defined benefit plan does not include the annual benefit attributable to the amount transferred (determined as if the transferred amount were a rollover contribution subject to the rules of section 1.415-1(b)(2)(v)). Section 1.415(b)(3)(ii) further states that the rule in the preceding sentence applies regardless of whether the requirements of section 411 of the Code apply to the plan and, in the case of a transfer from a defined contribution plan that is not subject to the requirements of section 411 (such as a governmental plan) to a defined benefit plan, the rule applies even if the participant's benefits are not distributable from the defined contribution plan at the time of the transfer.

Revenue Ruling 2012-4, 2012-8 I.R.B. 386, involves the direct rollover of an eligible rollover distribution from a qualified defined contribution plan to a qualified defined benefit plan maintained by the same employer. The revenue ruling provides that a qualified defined benefit plan that accepts a direct rollover of an employee's or former employee's benefit from a qualified defined contribution plan maintained by the same employer does not violate section 411 or 415 of the Code if the defined benefit plan provides an annuity resulting from the direct rollover that is determined by converting the amount directly rolled over into an actuarially equivalent immediate annuity using the applicable interest rate and applicable mortality table under section 417(e) of the Code.

Revenue Ruling 2012-4 further provides that if the qualified defined benefit plan receiving a direct rollover were to use a more favorable actuarial basis (such as a higher interest rate than the section 417(e)(3)(C) applicable interest rate or a mortality table with shorter life expectancies than the applicable section 417(e)(3)(B) mortality table) for purposes of calculating the annuity resulting from the rollover amount, or otherwise provided for a larger annuity than the annuity derived from employee contributions as determined under section 411(c), then the portion of the benefit under the qualified defined benefit plan resulting from the amount directly rolled over that exceeds the benefit derived from that rolled over amount under the rules of section 411(c)(2)(B) is not treated as the benefit derived from the employee's own contributions, and the excess portion would be included in the annual benefit for purposes of section 415(b) of the Code.

In this case, participants in Plan C are permitted to elect to have amounts otherwise distributable to them under Plan C transferred directly to Plan D. Plan C and Plan D are

each eligible retirement plans, within the meaning of section 401(a)(31)(E) of the Code. The amounts transferred constitute eligible rollover distributions, as defined in section 401(a)(31)(D) of the Code. Therefore, each employee's elective plan-to-plan transfer of assets from Plan C to Plan D constitutes a direct rollover within the meaning of section 401(a)(31) of the Code.

In addition, an employee's election to direct a plan-to-plan transfer of an eligible rollover distribution from one eligible retirement plan to another is not a direct or indirect election (or modification of an earlier election) by the employee to have the employer either provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available, or to contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation. Thus, the election to direct a plan-to-plan transfer of an eligible rollover distribution from Plan C to Plan D does not constitute a cash or deferred election, within the meaning of section 1.401(k)-1(a)(3)(i) of the Regulations. Rather, as provided in section 1.401(a)(31), A-15, of the Regulations, the plan-to-plan transfer (i.e., direct rollover) from Plan C to Plan D is treated as a distribution and rollover of the eligible rollover distribution (rather than a transfer of assets and liabilities). Accordingly, the employees' ability to elect a direct plan-to-plan transfer of assets from Plan C to Plan D does not constitute a cash or deferred arrangement, within the meaning of section 1.401(k)-1(a)(2) of the Regulations.

Under section 402(c)(1) of the Code, the amount transferred from Plan C to Plan D on behalf of an employee in a direct rollover is not includible in the gross income of the employee for the taxable year in which the plan-to-plan transfer occurs. In accordance with section 402(a) of the Code, such amount is taxable to the employee in the taxable year in which the amount is distributed from Plan D under section 72 of the Code (relating to annuities). Therefore, the direct rollover of an employee's account balance under Plan C to Plan D Is a permissible plan transfer that will not result in taxation to the employee under sections 72(t), 401(k), or 402 of the Code at the time of the rollover, and similarly will not result in constructive receipt of such amounts by an affected employee under section 72(t) or 401(k) of the Code at the time of the rollover.

Pursuant to section 1.415(b)-1(b)(1)(ii) of the Regulations, an employee's Plan D benefit resulting from the amount directly rolled over from Plan C on the employee's behalf is generally excluded from the employee's annual benefit for purposes of section 415(b) of the Code. However, as provided in sections 1.415(b)-1(b)(1)(ii) and 1.415(b)-1(b)(2)(v) of the Regulations, the amount that is directly rolled over from Plan C to Plan D is excluded from the employee's annual benefit for purposes of section 415(b) only to the extent the Plan D benefit is determined using the rules of sections 411(c)(2)(B) and (C) of the Code, In addition, in accordance with Revenue Ruling 2014-4, a direct rollover from Plan C to Plan D will not be subject to the limitations on benefits under section 415(b) of the Code, provided the resulting Plan D benefit is an annuity that is determined by converting such amount directly rolled over into an actuarially equivalent

immediate annuity using the applicable interest rate and applicable mortality table under Code section 417(e).

If the Plan D benefit attributable to the amount directly rolled over from Plan C is determined using a more favorable actuarial basis than as provided under sections 411(c)(2)(B) and (C) of the Code, then the portion of the Plan D benefit resulting from the amount directly rolled over that exceeds the benefit derived from the rolled over amount under the rules of section 411(c)(2)(B) is not treated as the benefit derived from the employee's own contributions, and the excess portion must be included in the annual benefit for purposes of section 415(b) of the Code. For example, as described in Revenue Ruling 2012-4, an amount might be included in the annual benefit, for purposes of section 415(b), if a higher interest rate than the section 417(e)(3)(c) applicable interest rate, or a mortality table with shorter life expectancies than the applicable section 417(e)(3)(B) mortality table, is utilized. Similarly, an amount would be included in the annual benefit for purposes of section 415(b) if the Plan D annuity benefit resulting from the rollover from Plan C is otherwise larger than that determined under section 411(c) of the Code.

Based on the foregoing, we conclude that the transfer of assets from Plan C to Plan D after a participant's severance from employment, regardless of whether the participant has an existing Plan D benefit -

1. Is a permissible plan transfer that will not result in taxation to the participant under sections 72(t), 401(k), or 402 of the Code at the time of such transfer;

2. Will not result in constructive receipt of such amounts by an affected participant under section 72(t) or 401(k) of the Code; and

3. Will not be subject to the limitations on benefits under section 415(b) of the Code to the extent the annual benefit under Plan D derived from the transfer of assets from Plan C is determined using the rules set forth in section 411(c) of the Code:

This ruling is based on the assumption that Plan C and Plan D satisfy the qualification requirements set forth in section 401(a) of the Code, and constitute governmental plans within the meaning of section 414(d) of the Code, at all relevant times.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Laura B. Warshawsky
Senior Tax Law Specialist
Qualified Plans Branch 2
(Tax Exempt and Government Entities)

cc: