Internal Revenue Service Department of the Treasury

Significant Index Nos.:
72.00-00; 402.00-00; 401.29-02;
3405.00-00; 6047.04-00

Washington, DC 20224

Person to Contact: 199914055

Telephone Number:

Refer Reply to:
OP:E:EP:T:2
Date:

JAN 14 1999

Attn:

LEGEND

State A =

Employer B =

Plan Administrator C =

Plan W =

Plan X =

Plan Y =

Plan Z =

Dear :

This is in response to your request for a private letter ruling dated , as supplemented by additional correspondence dated , and , submitted on your behalf by your authorized representative. In support of your request, your authorized representative has submitted the following facts and representations.

Plan Administrator C is the plan administrator of Plan W acting on behalf of Employer B. Employer B maintains Plan W which is qualified under section 401(a) of the Internal Revenue Code ("Code"). Individuals employed by Employer B and employees of State A cities, counties, or urban county governments, or agencies, political subdivisions, or instrumentalities of State A which adopt Plan W are eligible to participate in Plan W ("Participants") and may elect to defer compensation in accordance with the terms and provisions of Plan W.

Pursuant to State A law, employees of Employer B, State A cities, counties, or urban county governments, or political subdivisions or instrumentalities thereof, and members of State A

police are eligible to participate and accrue pension benefits under Plan X, Plan Y and Plan Z respectively. Employees who participate in Plan X, Plan Y and Plan Z are considered members of each respective defined benefit pension plan ("Members"), and Plan X, Plan Y and Plan Z are qualified under section 401(a) of the Code.

Employer B has adopted Plan W, Plan X, Plan Y and Plan Z for the benefit of its eligible employees in order to provide funds for their retirement. Pursuant to the terms of Plan X, Plan Y and Plan Z and in order to increase a Member's benefit under Plan X, Plan Y and Plan Z, service credit may be purchased by Members. As permitted by State A statute, a Member may elect to purchase various types of service credit. A Member's normal retirement benefit is based on years of credited service under Plan X, Plan Y and Plan Z. Therefore, the purchase of service credit will enhance a Member's benefit under Plan X, Plan Y and Plan Z.

In order to permit in-service Participants who may elect to increase their pension benefit under Plan X, Plan Y and Plan Z by the purchase of service credit, Plan W has been amended to permit a Participant to transfer elective deferrals and rollover contributions under Plan W (in both cases, together with earnings) directly to the trust of Plan X, Plan Y and Plan Z for the purchase of service credit ("401(k) Transfers"). Most of the 401(k) Transfer requests are anticipated to be made by Participants prior to, rather than upon, retirement, death, disability or separation from service.

The 401(k) Transfers will be held by the trust of Plan X, Plan Y and Plan Z and be considered part of the transferring Participant/Member's individual allowance account under Plan X, Plan Y and Plan Z. The 401(k) Transfers will be credited with annual interest in accordance with Plan X, Plan Y and Plan Z provisions pursuant to State A statute. Plan X, Plan Y and Plan Z have represented that 401(k) Transfers will be subject to withdrawal and distribution restrictions so that a Member may not withdraw or receive a distribution of amounts representing 401(k) Transfers prior to retirement, death, disability, or separation from service. The 401(k) Transfers will be nonforfeitable under the terms and provisions of Plan X, Plan Y and Plan Z.

Based on the above, you request the following letter rulings:

(1) The amounts representing 401(k) Transfers which are transferred by Plan W on behalf of and at the direction of a Participant to his Member account under Plan X, Y, Z in order to purchase service credit for the Member will not result in ordinary income to the Participant

under section 72 of the Code, pursuant to section 402(a) of the Code by reason of such transfer.

(2) The amounts representing 401(k) Transfers which are transferred by Plan W on behalf of and at the direction of a Participant to his Member account under Plan X, Y or Z to purchase service credit on behalf of the Member under Plan X, Y or Z will not constitute either an impermissible actual distribution or a constructive distribution under section 401(k)(2)(B) of the Code nor will 401(k) Transfers constitute a violation of the separate accounting under Treas. Reg. section 1.401(k)-1(e)(3).

(3) The amounts representing 401(k) Transfers which are transferred by Plan W on behalf of and at the direction of a Participant to his Member account under Plan X, Y, or Z to purchase service credit will not be considered a designated distribution for the year of transfer subject to withholding requirements under Code section 3405 and tax reporting under section 6047(d) of the Code.

With respect to ruling request one, section 402(a) of the Code provides that, except as otherwise provided in this subsection, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Revenue Ruling 67-213, 1967-2 C.B. 149, holds that where the interests of participants are transferred from a trust forming part of one qualified plan to a trust forming part of another qualified plan, no amounts will be considered distributed or made available to the participants by reason of their transfer.

According to the facts presented, a Participant may elect to transfer in a plan-to-plan transfer elective deferrals and rollover contributions from Plan W to Plan X, Plan Y or Plan Z. Since the elective deferrals and rollover contributions under Plan W are transferred directly to the trust of Plan X, Plan Y, and Plan Z, they will not be treated as distributed to the Participants.

Therefore, we conclude with respect to ruling request one, that the amounts representing 401(k) Transfers which are transferred by Plan W on behalf of and at the direction of a Participant to his Member account under Plan X, Plan Y or Plan Z in order to purchase service credit for the Member will not

result in ordinary income to the Participant under section 72 of the Code, pursuant to section 402(a) of the Code by reason of such transfer.

With respect to ruling request two, section 401(k)(2)(B) of the Code provides, in pertinent part, that a qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or rural cooperative plan which meets the requirements of subsection (a) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to Participants or other beneficiaries earlier than separation from service, death or disability or attainment of age 59½, and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years.

Section 1.401(k)-1(d)(6)(iv) of the Income Tax Regulations provides that the distribution limitations of paragraph (d) (as also stated in section 401(k)(2)(B) of the Code) generally continue to apply to amounts attributable to elective contributions (including amounts treated as elective contributions) that are transferred to another qualified plan of the same employer or another employer. Thus, the transferee plan will generally fail to satisfy the requirements of section 401(a) and this section if transferred amounts may be distributed before the times specified in paragraph (d).

Section 1.401(k)-1(e)(3) of the Income Tax Regulations sets forth the additional requirement for qualified cash or deferred arrangements of separate accounting, which is treated as satisfied if amounts held under the plan are treated as nonforfeitable and subject to certain distribution limitations--i.e., in pertinent part, the employee's retirement, death, disability or separation from service, or termination of the plan. Separate accounting is not acceptable unless gains, losses, withdrawals, and other credits or charges are separately allocated on a reasonable and consistent basis to accounts subject to the nonforfeitability requirement and distribution limitations and to other accounts.

Since it was held under ruling request one above that transferred amounts would not be deemed to be distributed at the time of transfer, such amounts also would not be considered as distributed under section 401(k)(2)(B) of the Code. Amounts which are eligible for transfer by a Participant are also nonforfeitable and subject to the relevant restrictions of section 1.401(k)-1(e)(3) of the Income Tax Regulations.

Hence, we conclude with respect to ruling request two that the amounts representing 401(k) Transfers which are transferred by Plan W on behalf of and at the direction of a Participant to his Member account under Plan X, Plan Y, or Plan Z to purchase service credit on behalf of the Member under Plan X, Plan Y, or Plan Z will not constitute either an impermissible actual distribution or a constructive distribution under section 401(k)(2)(B) of the Code nor will 401(k) Transfers constitute a violation of the separate accounting requirements under section 1.401(k)-1(e)(3) of the regulations.

With respect to ruling request three, section 3405(e)(1)(A) of the Code, in pertinent part, defines the term "designated distribution" as any distribution or payment from or under an employer deferred compensation plan.

Section 6047(d) of the Code requires that the employer maintaining, or the plan administrator (within the meaning of section 414(g)) of, a plan from which designated distributions (as defined in section 3405(e)(1)) may be made, make returns and reports regarding such plan to the Secretary, to the Participants and beneficiaries of such plan, and to such other persons as the Secretary may be regulations prescribe. No return or report may be required under the preceding sentence with respect to distributions to any person during any year unless such distributions aggregate $10 or more.

It has been represented that no portion of the elective deferrals or rollover contributions used to purchase service credit under Plan X, Plan Y or Plan Z will be distributed or made available to the Participants at the time of the purchase of the service credit. Instead, these amounts are transferred directly from the trust under Plan W to the trusts under Plan X, Plan Y or Plan Z. Thus, we conclude with respect to ruling request three that such purchase will not be considered a designated distribution for the year of transfer subject to withholding requirements under section 3405 of the Code and would not be includible in gross income. Also, since these amounts were not distributed to the Participants, a Form 1099 would not have to be filed in accordance with tax reporting under section 6047(d) of the Code.

The above rulings are based upon the assumption that Plans W, X, Y and Z will be qualified under section 401(a) of the Code at all relevant times.

This ruling expresses no opinion as to the impact of these proposed transfers upon the qualified, nor the continuing qualified status of the plans involved.

In accordance with a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
Deleted copy of letter ruling
Notice of intention to disclose

cc: