

**Internal Revenue Service
memorandum**

date: MAR 13 1997

to: Carol Gold
Director, Employee Plans Division

from: *Charles J. Deliee*
Charles T. Deliee
Branch Chief, DD:EBEO:1

subject: [REDACTED]

This is in response to your request for technical assistance dated January 23, 1997. [REDACTED]

[REDACTED] (the "Plan") submitted a private letter ruling request to you dated November 24, 1995 involving the application of sections 72, 402(a) and 3405(c)(1)(B) of the Internal Revenue Code (the "Code"). [REDACTED]

The Plan is a retirement plan sponsored by the [REDACTED] and covers all faculty and non-academic employees of the State's universities, colleges, class I community colleges, and other related agencies by providing such eligible members and their dependents with retirement, disability, death and survivor's benefits. The Plan requires that each participating employee make survivor's insurance contributions to the Plan. The Plan further requires that if upon retirement a participant has no survivor's insurance beneficiary, the participant is entitled to a refund of the accumulated survivor's insurance contributions, or to an additional annuity equal to the value of the accumulated contributions.

The Plan has proposed to allow these participants, in addition to the rights stated above, to use the survivor's insurance contributions to purchase certain types of service credit, for example, for service for other public employment, a leave of absence or military leave. Any amount of accumulated survivor's insurance contributions in excess of the amount required to purchase service credit will be distributed to the participant, will be treated as ordinary income under section 72 of the Code and will be subject to the mandatory twenty percent (20%) withholding under section 3405(c)(1)(B) of the Code.

[REDACTED]

PMTA: 01602

[REDACTED]

[REDACTED]

Ruling request 3 states:

3. The purchase of service credit by using all or a portion of a survivor's insurance contribution refund will not be considered to be an eligible rollover distribution so as to be subject to 20% withholding under section 3405(c)(1)(B).

[REDACTED]

[REDACTED]

The Plan represents that no amount of a participant's accumulated survivor's insurance contributions under the Plan that are used to purchase prior service credit by means of a refund and transfer of such contributions within the Plan will be distributed to or received by the participant. The accumulated survivor's insurance contributions will be transferred from within one aspect of the Plan to another. The taxpayer has represented that participants are not permitted to purchase the service credit with other funds but can purchase the credit only through the proposed transfer.

Section 3405(c)(1)(A) provides that in the case of any designated distribution which is an eligible rollover distribution, the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution. Section 3405(e)(1)(A)(i) defines "designated distribution" as any distribution or payment from or under an employer deferred compensation plan. An "eligible rollover distribution" is defined in section 402(c)(4), in pertinent part, as any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust.

Because the amounts transferred are not distributed to the employee, the transfer is not an eligible rollover distribution. Therefore, the 20% withholding under section 3405(a)(1)(A) does not apply.