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

200231019

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SIN: 402.06-00

MAY 9 2002

T:EP:RA:T3

Legend:

State S =

Employer E=

Plan A =

Plan B =

Plan C =

Account X =

Account Y =

This is in response to a request for a ruling letter dated December 7, 2000, and subsequent correspondence submitted on your behalf by your authorized representative. This request concerns certain legislation in State S permitting employees to transfer funds between plans for the purpose of purchasing certain permissive service credit.

The following facts and representations have been submitted on your behalf:

Employer E is an agency of State S created to administer and govern certain state colleges and universities of State S. Employer E maintains Plan A, a defined contribution plan that meets the requirements of Section 401(a) of the Internal Revenue Code, for the benefit of the employees of such colleges and universities. Plan A is composed of a number of accounts including the Individual Retirement Account Plan (IRAP), the Supplemental Retirement Plan (SRP), the After-Tax Contribution Account, and the Rollover Account. The IRAP is composed of two accounts, the IRAP Employer Pick Up Account and the IRAP Employer Matching Account. The SRP is composed of two accounts, the Employer Pick Up Account and the Employer Matching

Contribution Account. There are no employee after-tax contributions in the IRAP or the SRP. There are no after-tax contributions in any of the accounts except those held in the After Tax Contribution Account.

State S has also established a number of defined benefit plans benefiting the educational employees of State S and its political subdivisions, including Plan B and Plan C. Plan B and Plan C are qualified under section 401(a) of the Code.

When employment with Employer E commences, the newly hired employee has an election to participate in IRAP or Plan B or Plan C. Employees participating in IRAP or one of the specified defined benefit plans become eligible to participate in SRP after meeting certain service requirements. Both Plan A and Plan B permit their participants to purchase various forms of service credit specified under the plan. During the 2000 legislative session, the legislature of State S enacted legislation authorizing participants to use their SRP accounts by means of a plan to plan transfer for the purpose of purchasing various types of service credit under Plan B or Plan C. The transfer can only be made to the defined benefit plan under which the employee is a participant. The transfers can only be made if the transfers are not prohibited by or subject to penalty under federal law. As provided for under State S statute, the transfer must be a plan to plan transfer and in no event can the participant directly receive any of the funds while still employed by Employer E.

Rulings are requested on the following issues:

1. Whether plan amendments permitting Plan A participants to utilize their entire Account Y to purchase service credit in Plan B or Plan C jeopardizes the qualified status of Plan A.

2. Whether plan amendments permitting Plan A participants to utilize only that portion of Account Y representing employee contributions and related earnings to purchase service credit in Plan B or Plan C jeopardizes the qualified status of Plan A.

3. Will the transfer of Account Y assets directly from Plan A to Plan B or Plan C result in ordinary income to the participant under sections 402(a)(1) and 72 of the Code.

With respect to requests 1 and 2, section 6.03 of Rev. Proc. 2002-4, 2002-1 I.R.B. 127, provides that the Service ordinarily will not issue letter rulings on matters involving a plan's qualified status under Code sections 401 through 420 and section 4975. These matters are generally handled by the Employee Plans Determinations Program as provided in Rev. Proc. 2002-6, 2002-1 I.R.B. 203. Accordingly, we are not responding to ruling requests one and two.

With respect to request 3, section 402 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 the transfer.

According to the facts presented, the subject transfers are limited to direct plan to plan transfers and in no event can a participant receive a distribution of the transferred amounts while still employed. Therefore, the transfer of Account Y assets directly from Plan A to Plan B or Plan C will not result in ordinary income to the participant under sections 402(a)(1) and 72 of the Code.

This ruling is based on the assumption that Plans A, B and C will continue to qualify under section 401 (a) of the Code. This ruling is not a determination on any issue related to the ongoing qualification of the subject plans. As noted above, the qualification of the plans is a matter for the Employee Plans Determinations Program.

In addition, this ruling does not address any issue under section 72 of the Code regarding subsequent distributions from Plan B and Plan C of amounts that were the subject of this ruling.

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

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney submitted with the request.

The author of this letter is who may be reached at .

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government Entities Division

Enclosures:
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