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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 12 2003

Uniform Issue List: 403.00-00

T:EP:RA:T3

Attention:

Legend:

Employer A =

State M =

Plan X =

Dear

This is in response to your letter dated November 15, 2002, submitted by your authorized representative, in which you requested rulings concerning the taxability of contributions made under a plan described in section 403(b) of the Internal Revenue Code (the "Code"). Letters dated February 7, 2003, May 14, 2003, and July 14 2003, supplemented the request.

Employer A is a State M public school corporation and is an educational organization described in section 170(b)(1)(A)(ii) of the Code. Employer A established Plan X, a tax-sheltered annuity plan described in section 403(b) of the Code. Plan X was effective January 1, 1996. Most recently, Plan X was amended and restated effective January 1, 2003. Plan X is funded exclusively through the purchase of annuity contracts. All contributions are funded by means of salary reduction agreements and are applied to individual annuities issued to each participant. Participation in Plan X is limited to eligible employees of Employer A. Section 2.02(m) of Plan X defines an "Eligible Employee" as "any Employee other than an Employee who does not elect to contribute more than two

hundred dollars annually to the Plan". Under section 5.01 of Plan X, such eligible employees will be permitted to make salary reduction contributions to Plan X up to the limits imposed under sections 415 and 402(g) of the Code.

Section 4.03 of Plan X provides that an eligible employee may contribute to Plan X, as a rollover contribution, a prior distribution from a plan described in sections 403(b), 457(b) (governmental plan), 408 of the Code, or a plan qualified under section 401(a) of the Code. Section 11.02 of Plan X provides that a distributee who is eligible to receive an eligible rollover distribution under Plan X may elect to have the distribution rolled over in a direct rollover to an eligible retirement plan.

Pursuant to section 4.01(d) of Plan X, salary reduction contributions and earnings thereon under Plan X will be fully vested and nonforfeitable at all times.

Under section 9.01 of Plan X, a distribution of a participant's account balance may not be made before the earliest of the participant's (1) death, (2) severance of employment; (3) attainment of age 59 ½, (4) disability, or (5) financial hardship.

Section 9.04 of Plan X provides that all distributions will be determined and made in accordance with the Income Tax Regulations under section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the regulations. The entire interest of a participant will be distributed to him or her in full or at least commence no later than the April 1st following the later of the calendar year in which the participant retires or attains age 70 ½ .

Section 15.02 of Plan X also provides that benefits thereunder shall not be subject to alienation, encumbrance, the claims of creditors or legal process. No person will have the power to transfer, assign, alienate or in any way encumber a participant's benefits.

Based on the foregoing, you request a ruling that Plan X satisfies the requirements of the Code as applicable to a section 403(b) program and amounts contributed on behalf of employees of Employer A shall be excluded from the employees' gross income in the year of contribution to the extent such amounts do not exceed the applicable limits described in the Code.

Section 403(b)(1) of the Code as amended by the Economic Growth and Tax Relief and Reconciliation Act of 2001 ("EGTRRA"), and applicable for years beginning after December 31, 2001, provides that amounts contributed by an employer to purchase an annuity contract for an employee are excludable from the gross income of the employee in the year contributed, provided (1) the employee performs services for an employer which is exempt from tax under section 501(a) of the Code as an organization described in section 501(c)(3), or the employee performs services for an educational institution (as defined in section 170(b)(1)(A)(ii) of the Code) which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of the foregoing; (2) the annuity contract is not subject to section 403(a) of the Code; (3) the employee's rights under the contract are nonforfeitable except for failure to pay future premiums; (4) such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), except in the case of a contract purchased by a church; and, (5) in the case of a contract purchased

under a plan which provides a salary reduction agreement, the contract meets the requirements of section 401(a)(30).

Section 403(b)(1) of the Code provides further that the employee shall include in his gross income the amounts actually distributed under such contract in the year distributed as provided in section 72 of the Code.

Section 403(b)(10) of the Code requires that arrangements pursuant to section 403(b) must satisfy requirements similar to the requirements of section 401(a)(9) and similar to the incidental death benefit requirements of section 401(a) with respect to benefits accruing after December 31, 1986, in taxable years ending after such date. In addition, this section requires that the requirements of section 401(a)(31), regarding direct rollovers, are met.

Section 401(a)(9) of the Code, generally, provides that the required beginning date for commencement of benefits is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½, or the calendar year in which the employee retires. Section 401(a)(9) specifies required minimum distribution rules for the payment of benefits from qualified plans.

Section 403(b)(11) of the Code provides, generally, that section 403(b) annuity contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only when the employee attains age 59 ½ , has a severance from employment, dies, becomes disabled (within the meaning of section 72(m)(7)), or in the case of hardship. Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

Section 401(g) of the Code requires that the contract be nontransferable.

Section 403(b)(1)(E) of the Code provides that in the case of a contract purchased under a plan which provides a salary reduction agreement, the contract must meet the requirements of section 401(a)(30). Section 401(a)(30) requires a section 403(b) arrangement, which provides for elective deferrals, to limit such deferrals under the arrangement, in combination with any other qualified plans or arrangements, of an employer maintaining such plan, providing for elective deferrals, to the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year.

Section 402(g)(1) of the Code provides, generally, that the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals exceeds $12,000 (for 2003 calendar year). Such amount is increased by an amount equal to $1,000 for each year through 2006.

Section 402(g)(7) of the Code provides that, in the case of a qualified employee of a qualified organization, with respect to employer contributions used to purchase an annuity contract under section 403(b) under a salary reduction agreement, the limitation of section 402(g)(1), as modified by section 402(g)(4), for any taxable year shall be increased by whichever of the following is the least: (i) $3,000, (ii) $15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or (iii) the

excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary). A "qualified organization" for these purposes means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches and includes any organization described in section 414(e)(3)(B)(ii) and a "qualified employee" means any employee who has completed 15 years of service with the qualified organization.

Section 415(a)(2) of the Code provides, in relevant part, that an annuity contract described in section 403(b) shall not be considered described in section 403(b) unless it satisfies the section 415 limitations. In the case of an annuity contract described in section 403(b), the preceding sentence applies only to the portion of the annuity contract exceeding the section 415(b) or 415(c) limitations.

All contributions and the earnings thereon are fully vested and nonforfeitable at all times. Plan X does not meet the requirements of a section 403(a) annuity contract. The restrictions of transferability of annuity contracts are present in Plan X as required by section 401(g) of the Code.

Plan X satisfies the limits, under section 403(b)(11) of the Code, that amounts attributable to elective deferrals shall not be distributable earlier than upon the attainment of age 59 ½ , severance from employment, death, disability, or hardship. In addition, Plan X satisfies the section 403(b)(10) requirements and limits contributions in accordance with sections 402(g) and 415 of the Code. Also, the salary reduction agreement which each eligible employee of Employer A who becomes a participant in Plan X may elect to enter into meets all of the applicable requirements of the Code and regulations.

Accordingly, we conclude with respect to your ruling request that Plan X satisfies the requirements of the Code as applicable to a section 403(b) program and amounts contributed on behalf of employees of Employer A shall be excluded from the employees' gross income in the year of contribution to the extent such amounts do not exceed the applicable limits described in the Code.

This ruling is contingent upon the adoption of the amendments to Plan X, as stipulated in your correspondence dated February 7, 2003, May 14, 2003, and July 14 2003, and will have no effect unless such proposed amendments are adopted.

This ruling is limited to the form of Plan X, excluding any form defects which may violate the nondiscrimination requirements of section 403(b)(12) of the Code. This ruling does not extend to any operational violations of section 403(b) of the Code by Plan X, now or in the future.

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

Any questions concerning this ruling should be addressed to
at (not a toll free number).

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

/s/ Frances V. Sloan

Frances V. Sloan, Manager
Tax Exempt and Government Entities Division

Enclosures:
Notice 437
Deleted copy of ruling letter

CC: