200103075

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to: T:EP:RA:T3

Date: OCT 24 2000

Attn:

UIL: 401.00-00
414.00-00
3401.00-00

Legend:

State A =
Group B Employees =

Resolution D =
Employer M =
Plan X =

Dear

In a letter dated May 24, 2000, your authorized representative requested a ruling on your behalf concerning the federal income tax treatment of certain contributions to Plan X under section 414(h)(2) of the Internal Revenue Code.

The following facts and representations have been submitted:

Employer M is a political subdivision of State A. Employer M is a participating employer in Plan X for the benefit of Group B Employees. You have represented that Plan X meets the qualification requirements of section 401(a) of the Code. On April 12, 2000, Employer M passed Resolution D which authorized Employer M to pick up, on a fringe benefit basis, three percent of Group B Employees' contributions to Plan X in year 2000 and four and one-half percent of Group B Employees' contributions to Plan X in year 2001 and thereafter. Plan X requires mandatory employee contributions by Group B Employees. Resolution D mandates that Group B Employees will have no option to receive the picked-up contributions in cash in lieu of having such contributions paid to Plan X. In addition, Resolution D provides that the picked-up contributions, although designated as employee contributions, are to be paid by Employer M in lieu of contributions by Group B Employees.

Based upon the aforementioned facts, you request a ruling that:

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1. Plan X qualifies as a pick-up plan pursuant to section 414(h)(2) of the Code;

2. No part of the amount of the contributions picked up by Employer M and contributed to Plan X will be included in the gross income of Group B Employees for federal income tax purposes;

3. The contributions picked up by Employer M and contributed to Plan X, though designated as employee contributions, will be treated as employer contributions for federal income tax purposes;

4. Distribution of the picked-up contributions by Employer M on behalf of Group B Employees under Plan X, either through a retirement pension, a lump sum distribution, or otherwise will be considered a distribution taxable under section 402 of the Code; and

5. Under the provisions of section 3401(a)(12)(A) of the Code, the picked-up contributions to Plan X will be treated as employer contributions with respect to Plan X and will be excluded from wages for purposes of the Collection of Income Tax at Source on Wages.

Section 414(h)(2) of the Code provides that contributions, otherwise designated as employee contributions, shall be treated as employer contributions if such contributions are made to a plan described in section 401(a), established by a state government or a political subdivision thereof, and are picked up by the employing unit.

The federal income tax treatment to be accorded contributions which are picked up by the employer within the meaning of section 414(h)(2) of the Code is specified in Revenue Ruling 77-462, 1977-2 C.B. 358. In that revenue ruling, the employer school district agreed to assume and pay the amounts employees were required by state law to contribute to a state pension plan. Revenue Ruling 77-462 concluded that the school district's picked-up contributions to the plan are excluded from the employees' gross income until such time as they are distributed to the employees. The revenue ruling held further that under the provisions of section 3401(a)(12)(A) of the Code, the school district's contributions to the plan are excluded from wages for purposes of the Collection of Income Tax at Source on Wages; therefore, no withholding is required from the employees' salaries with respect to such picked-up contributions.

The issue of whether contributions have been picked up by an employer within the meaning of Code section 414(h)(2) is addressed in Revenue Ruling 81-35, 1981-1 C.B. 255 and Revenue Ruling 81-36, 1981-1 C.B. 255. These revenue rulings established that the following two criteria must be met: (1) the employer must specify that the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee; and (2) the employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the pension plan. Furthermore, it is immaterial, for purposes of the applicability of section 414(h)(2), whether an employer picks up contributions through a reduction in salary, an offset against future salary increases, or a combination of both.

In Revenue Ruling 87-10, 1987-1 C.B. 136, the Internal Revenue Service considered whether contributions designated as employee contributions to a governmental plan are excludable from the gross income of the employee. The Service concluded that to satisfy the criteria set forth in Revenue Rulings 81-35 and 81-36 with respect to particular contributions, the required specification of designated employee contributions must be completed before the period to which such contributions relate.

Pursuant to Resolution D, criteria set forth in Revenue Ruling 81-35 and Revenue Ruling 81-36 is satisfied by providing, in effect, that Employer M will make contributions in lieu of Group B Employees' contributions and by providing that Group B Employees shall not be given the option to receive such contributions directly.

Accordingly, with respect to ruling request 1, we conclude that Plan X qualifies as a pick-up plan pursuant to section 414(h)(2) of the Code; with respect to ruling request 2, we conclude that no part of the amount of the contributions picked up by Employer M and contributed to Plan X will be included in the gross income of Group B Employees for federal income tax purposes; with request to ruling request 3, we conclude that the contributions picked up by Employer M and contributed to Plan X, though designated as employee contributions, will be treated as employer contributions for federal income tax purposes; and with respect to ruling request 4, we conclude that distribution of the picked-up contributions by Employer M on behalf of Group B Employees under Plan X, either through a retirement pension, a lump sum distribution, or otherwise will be considered a distribution taxable under section 402 of the Code.

Because we have determined that the picked-up amounts are to be treated as employer contributions, they are excepted from wages as defined in section 3401(a)(12)(A) of the Code for federal income tax withholding purposes. Therefore, with respect to ruling request 5, we conclude that under the provisions of

section 3401(a)(12)(A) of the Code, the picked-up contributions to Plan X will be treated as employer contributions with respect to Plan X and will be excluded from wages for purposes of the Collection of Income Tax at Source on Wages.

In accordance with Rev. Rul. 87-10, this ruling does not apply to any contribution to the extent it relates to compensation earned before the later of the effective date of the relevant statutes, the date the pick-up election is executed or the date it is put into effect.

No opinion is expressed as to whether the amounts in question are subject to tax under the Federal Insurance Contributions Act. No opinion is expressed as to whether the amounts in question are paid pursuant to a "salary reduction agreement" within the meaning of section 3121(v)(1)(B) of the Code.

These rulings are based on the assumption that Plan X will be qualified under section 401(a) of the Code at the time of the proposed contributions and distributions.

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 on file in this office.

Sincerely yours,

/s/ Frances V. Sloan

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

Enclosures:
Deleted copy of this ruling
Notice 437

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