200032048

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 403.04-00

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Contact Person: **********

Telephone Number: **********
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In Reference to: **********T:EP:RA:T4

Date: MAY 18 2000

Attention: **********

Legend:

Employer = **********
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Medical School = **********

University = **********

State A = *********

Plan X = **********
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Annuity A = **********
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Annuity B = **********
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Annuity C = **********
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Ladies and Gentlemen:

This is in response to a request for a ruling submitted on your behalf in a letter dated May 23, 1997, as supplemented by correspondence dated July 20, 1998, February 15, 1999, May 4, 1999, and June 8, 1999, concerning whether Plan X meets the requirements of section 403(b) of the Internal Revenue Code ("Code"), and whether Plan X is a governmental plan as defined in section 414(d) of the Code.

The following facts and representations have been made in support of the request for a ruling that Plan X meets the requirements of a Code section 403(b) annuity purchase program:

The Employer is a medical faculty practice incorporated as a professional service corporation under the laws of State A and is associated with the University through the Medical School. The Employer was chartered to advance the purposes of the medical education program and related activities of the Medical School of the University, which is a state university chartered as part of the State A university system. The Employer received determination letters dated April 18, 1979 and August 25, 1986, from the Internal Revenue Service recognizing it as an organization exempt from federal income tax under section 501(c)(3) of the Code.

Article I of Plan X states that the Employer's Board of Directors established Plan X, effective as of January 1, 1996. Plan contributions are invested in one or more of the Funding Vehicles available to the participants under the Plan, at the direction of the participant. Article XI provides that the Plan Administrator will be a committee of individuals appointed by the Board of Directors of the Plan Sponsor which is the Employer.

Annuity A, Annuity B and Annuity C are the Funding Vehicles under Plan X for the investment of plan contributions. It was submitted that these annuity contracts together with their respective endorsements meet the requirements of a tax-sheltered annuity contract under section 403(b) of the Code.

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Any employee employed by the Employer is eligible to participate in Plan X for purposes of making elective deferral contributions by executing a Salary Deferral Agreement. No participant shall be permitted to elect deferral contributions in excess of the dollar limitation set forth in section 402(g) of the Code. For each plan year the Employer also contributes eight percent of compensation for each "active participant" under the plan.

A letter ruling was requested on your behalf to the effect that Plan X, as amended and restated, qualifies as an annuity purchase plan described in section 403(b) of the Code.

An employee described in section 2.14 of Plan X is an employee who performs services for the Employer, an organization described in section 501(c)(3) of the Code that meets the requirement of section 403(b)(1)(A)(i) of the Code.

Sections 3.03 and 4.02 of Plan X describe the deferral contributions and Salary Deferral Agreement, which satisfy the requirements of section 1.403(b)-1(b)(3) of the Income Tax Regulations and the requirements of section 1450(a) of the Small Business Job Protection Act of 1996. Section 4.02 of the Plan and the Salary Deferral Agreement provide that salary reductions of a monthly amount or percentage of earnings are effective with respect to amounts earned subsequent to the execution of the agreement.

Information submitted and the Funding Vehicles described in Article VI of Plan X (i.e., Annuity A, Annuity B and Annuity C) show that the Plan X annuity purchase arrangement is not subject to section 403(a) of the Code, as required by section 403(b)(1)(B) of the Code.

Article VII of Plan X satisfies the non-forfeitable requirement of section 403(b)(1)(C) of the Code because, under Article VII, a participant is fully and immediately vested in amounts attributable to employer contributions and elective deferral contributions. Article X of Plan X restricts the transfer of benefits and satisfies the requirement of section 401(g) of the Code that the annuity contract be nontransferable. However, Article X also provides that Plan X will comply with any judgment, decree, or order that

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establishes the rights of another person to all or a portion of a participant's benefits under a "qualified domestic relations order."

Deferral contributions in section 4.02(a) of Plan X are limited in accordance with the dollar limitation in section 402(g)(1) of the Code, as adjusted for cost-of-living increases. 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 to limit elective deferrals under the arrangement, in combination with any other qualified plans or arrangements (of an employer maintaining such plans or arrangements) providing for elective deferrals, to the limitation in effect under section 402(g)(1). Under the terms of Annuity A, Annuity B, and Annuity C, deferral contributions made by a participant may not exceed the annual limit on elective deferrals described in section 402(g) of the Code. Section 4.02(b) of Plan X provides for the timely distribution of excess deferral contributions.

Section 2.04 of Plan X limits compensation to $150,000, as adjusted for cost-of-living increases, according to section 401(A)(17) of the Code.

Article V of Plan X satisfies the requirements of section 415(c) of the Code. Section 5.01 of the Plan provides that the maximum annual additions that may be contributed or allocated to a participant's account for any limitation year shall not exceed the lesser of $30,000 (as adjusted for cost-of-living increases) or 25 percent of the participant's compensation. "Annual Additions" are defined as the total of employer contributions and deferral contributions allocated to a participant's account but excluding rollover contributions made to Plan X. When contributions are made in excess of the limits of section 415 of the Code, section 5.02 of Plan X provides for the timely distribution to a participant of deferral contributions in order to ensure compliance with the limits of Code section 415.

Section 5.03 of Plan X provides for the calculation of a participant's exclusion allowance under section 403(b)(2)(A)

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of the Code and provides that employer contributions and deferral contributions on behalf of a participant may not exceed the participant's exclusion allowance for the taxable year.

Under section 8.01 of Plan X a participant is entitled to receive retirement benefits under the options set forth in the relevant Funding Vehicle(s). Participant benefits payable under Article VIII of Plan X are restricted by section 403(b)(11) of the Code because no withdrawals are permitted prior to attaining age 59 1/2, separation from service, death, disability or hardship. Further, only deferral contributions, excluding any income attributable to deferral contributions, may be distributed on account of hardship. Section 8.02(1)(a) of the Plan defines hardship.

Plan X satisfies the distribution requirements in section 403(b)(10) of the Code because the minimum distribution requirements and incidental death benefit requirements of Code section 401(a)(9) and the trustee-to-trustee transfer requirement of Code section 401(a)(31) are satisfied. Section 4.03 of Plan X permits rollover contributions and direct transfers to Plan X of eligible rollover distributions from a section 403(b) plan. Section 8.06 of Plan X permits a distributee to elect a direct trustee-to-trustee transfer of an eligible rollover distribution to a specified eligible retirement plan as required by section 401(a)(31) of the Code.

Section 8.01 and sections 8.03 through 8.05 of Plan X provide for the distribution of participants' benefits in compliance with the minimum distribution requirements of section 401(a)(9) of the Code, including the minimum distribution incidental benefit rules.

Section 8.03 of Plan X provides that on the death of a participant prior to the commencement of retirement benefit payments the full current value of the participant's account(s) is payable to the beneficiary or beneficiaries named by the participant, under the options set forth in the relevant Funding Vehicles. Distributions of survivor benefits are subject to the required minimum distribution rules in Code section 401(a)(9).

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Under section 8.05 of Plan X, all distributions will be made according to the proposed regulations under Code section 401(a)(9), including proposed regulations section 1.401(a)(9)-2 (concerning the minimum distribution incidental death benefit requirement). In general, distributions commence no later than April 1 of the calendar year following the calendar year in which the participant attains age 70 ½ and continue over the life expectancy of the participant or the life expectancy of the participant and a designated beneficiary. If distributions begin before the participant's death, any remaining interest will be distributed at least as rapidly as under the method of distribution in effect at the time of the participant's death. If a participant dies before the time benefit payments begin, any portion of his or her interest payable to (or for the benefit of) a designated beneficiary will be paid within five years of the participant's death or will be paid, beginning not later than one year after the participant's death, over the life of the designated beneficiary or over a period not exceeding the life expectancy of the designated beneficiary. If the designated beneficiary is the surviving spouse, payment may be delayed until the date the participant would have attained age 70 1/2.

Section 13.05 of Plan X provides that if there is any inconsistency or any ambiguity between the terms of the Plan and the terms of the contracts and/or certificates, the terms of the Plan control.

Based on the information submitted, we conclude that Plan X, as amended and restated, qualifies as an annuity purchase program described in section 403(b) of the Code. Accordingly, elective deferral contributions and employer contributions under Plan X that are used to purchase Annuity A, Annuity B, or Annuity C will be treated as amounts contributed by the Employer for annuity contracts described in section 403(b) of the Code. Furthermore, elective deferral contributions and employer contributions under Plan X are not includible in the participants' gross income in the year contributed to the extent that such contributions do not exceed the applicable limits under sections 402(g), 403(b)(2) or 415 of the Code, but instead will be includible in the participants' gross income in the taxable year such amounts are distributed under section 72 of the Code.

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This ruling is based on the condition that the Board of Directors of the Employer adopt Plan X, as amended and restated in your correspondence of February 15, 1999, and May 4, 1999, and will have no effect unless such plan is adopted.

This ruling is based upon the assumption that the annuity contracts used to fund Plan X, i.e., Annuity A, Annuity B and Annuity C, meet the requirements of section 403(b)(1) of the Code.

This ruling has not addressed whether Plan X meets the nondiscrimination requirements of section 403(b)(12) of the Code, where applicable, either in form or in operation. This ruling does not extend to any operational violations of section 403(b) by Plan X, now or in the future.

Because your ruling request presents more than one issue and because your authorized representative requested separate letter rulings, a separate letter ruling will be issued with respect to the ruling request that Plan X is a governmental plan as described in section 414(d) of the Code.

This letter ruling is directed only to the taxpayer that 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,

John G. Riddle, Jr.

John G. Riddle, Jr., Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437