Uniform Issue List No.

415.00-00

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

200229051

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR

T:EP:RA:T3

LEGEND:

State A:

Plan X:

Plan Y:

Program Z:

Dear

This letter is in response to a request for a ruling letter submitted on your behalf by your authorized representative on December 5, 2000, and modified by correspondence dated March 21, 2002. The requested ruling concerns the applicability of section 415(n) of the Internal Revenue Code ("Code") to certain inactive members who are fully vested participants in Plan X and wish to make voluntary contributions to Plan X in order to purchase Program Z enhancements. The following facts and representations have been submitted on your behalf:

Plan X is a defined benefit plan established for teachers and administrators of public schools in State A. Your authorized representative has represented that Plan X is qualified under Code section 401(a) and is a governmental plan as described in Code section 414(d). Plan X includes a mandatory employee contribution feature and certain elective contribution features. Each employer is required to pick up all of the participants' mandatory contributions. Creditable service under Plan X is time that an individual has worked as a teacher, administrator or other State A public employee, and for which the individual has paid or transferred retirement contributions to Plan X, and also includes certain military service and authorized leaves of absence.

State A recently enacted legislation which establishes Program Z. Program Z is an alternative superannuation retirement benefit program for Plan X participants. Program Z is available for both active and inactive Plan X participants. An inactive participant is a participant who has funds on account with Plan X but is not currently making retirement contributions via regular payroll deductions and is not on an authorized leave of absence. Program Z provides an enhanced retirement benefit for qualified retired members, increasing the retirement allowance by an additional two percent for each full year of creditable service in excess of 24 years, up to the statutory maximum of 80 percent of the participant's three-year salary average.

Participation in Program Z is mandatory for participants hired on or after July 1, 2001, and such participants will be required to make contributions to Plan X equal to 11 percent of regular compensation. Any Plan X participant who was a participant before July 1, 2001 – including inactive participants – may irrevocably elect to participate in Program Z on or after January 1, 2001 and before July 1, 2001. Any participant of a contributory retirement system who transfers into Plan X may irrevocably elect to participate in Program Z within 180 days of establishing participation in such system.

To be eligible for Program Z, a participant must have at least 30 years of creditable service, at least 20 of which must have been as a participant of Plan X or as a teacher in Plan Y. In addition, a participant must contribute at the new rate of 11 percent of compensation for at least five years, or, if retiring within less than five years of July 1, 2001, must pay to Plan X the equivalent of five years of retirement contributions at 11 percent. For inactive participants who elect to retire under Program Z, the 11 percent contribution rate is based upon the participant's last 12 months of regular compensation, with credit for contributions made during the participant's last five years of creditable service.

Based on the foregoing facts and representations, your authorized representative has requested a ruling that Code section 415(n) is applicable to inactive participants of Plan X who are fully vested participants in Plan X and seek to make voluntary contributions to Plan X in order to purchase Program Z enhancements.

Code section 415(n)(1) provides in general that, if an employee makes one or more contributions to a defined benefit governmental plan (within the meaning of section 414(d)) to purchase permissive service credit under such plan, then the requirements of this section shall be treated as met only if certain requirements pertaining to the section 415 limits on annual additions are met.

Code section 415(n)(3)(A) states that, for purposes of this subsection, the term "permissive service credit" means service credit (i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan, (ii) which such participant has not received under such governmental plan, and (iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Under Code section 415(n)(3)(A)(ii), a governmental plan participant can not purchase credit for service in the plan under which he has already received that service. Thus, Code section 415(n) operates only in situations where credit has not been provided by the plan to the employee for a period of service. In the present situation, Plan X and Program Z constitute two benefit structures in one plan because the factor used to determine which benefit structure is applicable to a participant is the participant's hire date. Accordingly, the plan has already provided service credit for the benefit that is provided by Program Z. Furthermore, the present situation involves inactive participants.

Therefore, with respect to your requested ruling, we conclude that Code section 415(n) is not applicable to inactive participants of Plan X who are fully vested participants in Plan X and seek to make voluntary contributions to Plan X in order to purchase Program Z enhancements.

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 ruling letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

If you have any questions, please contact

Sincerely yours,

Frances V. Sloan

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

Enclosures
Notice 437
Deleted copy of ruling letter