199931052

Internal Revenue Service

Department of the Treasury

Uniform Issue List: 403.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
OP:E:EP:T:3

Date:

Attn:

MAY 14, 1999

Legend:

Employer M =

Plan X =

Dear

This is in response to a ruling request dated September 9, 1998, as supplemented by a letter dated November 17, 1998, submitted on your behalf by your authorized representative, with respect to an arrangement described under section 403(b)(1) of the Internal Revenue Code.

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

Employer M is an organization described in section 501(c)(3) of the Code. Employer M established Plan X for the benefit of the employees of Employer M.

Under Plan X, participants may elect to invest funds in annuity contracts issued by an insurance company.

Pursuant to section 2.1 of Plan X, an eligible employee is any employee exclusive of employees who worked less than 20 hours a week. An eligible employee becomes a participant effective with the payroll period beginning on or next following the date 30 calendar days after the date a written election is received by the committee.

272

Two types of contributions may be made to Plan X on behalf of a participant. The two are: salary reduction contributions under section 3.1 of Plan X, and rollover contributions in accordance with section 403(b)(10) of the Code, pursuant to section 3.4 of Plan X. Under section 2.4 of Plan X, salary reduction contributions are limited to the lesser of the maximum exclusion allowance in accordance with section 403(b)(2) or the limitations under section 415(c). Section 3.3 of Plan X limits salary reduction contributions into Plan X to an amount no greater than permitted under section 402(g).

Pursuant to sections 9.1, 9.4, 10.2, and 10.3 of Plan X, distributions may be made only upon death or disability, termination of employment, or upon attainment of the required beginning date.

All contributions under Plan X are limited to the amount of the exclusion allowance as set forth under section 403(b)(2) of the Code. Under section 7.1 of Plan X, at least once each plan year, an individual statement will be issued to each participant showing the value of the account.

Under Article VIII of Plan X, all amounts allocated to a participant's annuity contract pursuant to the salary reduction agreement, and the amounts received pursuant to rollovers shall be nonforfeitable at all times.

Under section 10.3 of Plan X, distributions are made in accordance with section 401(a)(9) of the Code including the minimum distribution incidental benefit requirements of section 1.401(a)(9)-2 of the proposed Income Tax Regulations. Section 10.3(c) of Plan X further provides that the required beginning date means April 1 of the calendar year following the calendar year in which the participant attains age 70 ½.

Section 10.4 of Plan X provides that a distributee receiving an eligible rollover distribution under the Plan may elect to have the distribution rolled over in a direct rollover to an eligible retirement plan.

Based upon the foregoing facts and representations, you request a ruling that Plan X satisfies the requirements of section 403(b) of the Code.

Section 403(b)(1) of the Code provides, in part, 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 to the extent of the applicable "exclusion allowance", 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 plan 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) of the Code 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, for distributions made after December 31, 1992, the requirements of section 401(a)(31), regarding direct rollovers, are met.

Section 401(a)(9) of the Code, generally, provides that benefits commence by April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2, or the calendar year in which the employee retires, and specifies required minimum distribution rules for the payment of benefits from retirement 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 1/2, separates from service, 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 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 plan 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 $7,000.

Section 402(g)(4) of the Code provides that the limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500 ($10,000 for years after December 31, 1997)) by the amount of any employer contributions for the taxable year described in section 402(g)(3)(C).

Section 402(g)(3)(C) provides that the term "elective deferrals" includes, in part, with respect to any taxable year, any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement.

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 limitations and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2).

In this case, you represent that Employer M, an employer described in section 501(c)(3) of the Code, has established Plan X as its section 403(b) program for its employees. 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.

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, separation from service, death, disability, or hardship. In addition, Plan X satisfies the section 403(b)(10) requirements and limits contributions in accordance with sections 403(b)(2) and 415 of the Code.

Accordingly, based on the foregoing law and facts, we conclude with respect to your ruling request that Plan X satisfies the requirements of section 403(b) of the Code.

This ruling is contingent upon the adoption of the amendments to Plan X, as stipulated in your correspondence dated November 17, 1998 and will have no effect unless such proposed amendments are adopted.

This ruling is limited to the form of Plan X as amended, excluding any form defects that 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) by Plan X, now or in the future.

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
Chief, Employee
Plans Technical Branch 3

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose

CC: