200313020

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EP:RA:T3

DEC 30 2002

[redacted]

W/L: 401.00-00
414.00-00
3121.00-00

Legend:

State A = [redacted]

Group B
Employees = [redacted]

Employer N = [redacted]

Proposed Resolution R = [redacted]

Plan X = [redacted]

Dear [redacted]

In a letter dated April 29, 2002, and as supplemented by letters dated, August 7, 2002, August 22, 2002, September 23, 2002, October 7, 2002, and November 8, 2002, 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 N is a political subdivision of State A. Employer N maintains Plan X for the benefit of Group B Employees. You have represented that Plan X is intended to meet the qualification requirements of section 401(a) of the Code. Plan X requires mandatory employee contributions by Group B Employees.

By Proposed Resolution R, Employer N will agree to pick up, i.e., assume and pay, the mandatory employee contributions of Group B Employees to Plan X. Proposed Resolution R provides it will be effective after a favorable ruling is issued by the Internal Revenue Service on this request. Proposed Resolution R will specify that the contributions, although designated as employee contributions will be paid by Employer N in lieu of contributions by Group B Employees. Proposed Resolution R states that the Group B Employees will not have the option of choosing to receive the contributed amounts directly instead of having them paid by Employer N to Plan X.

[redacted]

Based on the aforementioned facts, you request the following rulings:

1. The mandatory employee contributions picked up by Employer N shall be excluded from the current gross income of Group B Employees until distributed or otherwise made available.

2. The picked-up contributions paid by Employer N are not wages for federal income tax withholding purposes and federal income taxes need not be withheld on the picked-up contributions.

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.

[redacted]

Pursuant to Proposed Resolution R, the criteria set forth in Revenue Ruling 81-35 and Revenue Ruling 81-36 will be satisfied by providing, in effect, that Employer N 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, we conclude that:

The amounts picked up by Employer N on behalf of Group B Employees will be treated as employer contributions and will not be includible in Group B Employees' gross income in the year in which such amounts are contributed. These amounts will be includible in the gross income of the Employees or their beneficiaries only in the taxable year in which they are distributed.

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, no withholding of federal income tax is required from Group B Employees' salaries with respect to such picked-up contributions.

For purposes of the application of section 414(h)(2) of the Code, it is immaterial whether an employee picks up contributions through a reduction in salary, an offset against future salary increases, or a combination of both.

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).

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.

[redacted]

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office. If you have any questions, please contact [redacted] at [redacted].

Sincerely yours,

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