Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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Date:

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Plan A =

Plan B =

Plan C =

County G =

Entity E =

Corporation F =

State S =

State Statute =

Dear

This responds to your letter of May 22, 1998, and subsequent correspondence requesting a ruling on behalf of County G, Entity E, and Corporation F. This private ruling request concerns the Federal tax consequences of permitting elective plan-to-plan transfers of assets between Deferred Compensation Plans B and C (the "Plans") in the circumstances described below under section 457 of the Internal Revenue Code of 1986. Plans A, B and C are all represented to be eligible deferred compensation plans described in section 457(b).

Entity E, a public hospital previously owned and operated by County G, recently had its assets and operations transferred to Corporation F, a public benefit corporation established under the above-identified State Statute. F is represented to be a governmental instrumentality described in section 457(e)(1)(A) pursuant to the State Statute.

Prior to E's transfer, E's employees were eligible to participate in Plan A, the eligible section 457 plan adopted by County G. After E was transferred to F, its employees ceased to be employees of G and became employees of F. They also ceased to accrue any further deferrals in G's section 457 plan. The employees of F who want to begin or continue participating in an eligible section 457 deferred compensation plan will have to make their future deferrals into Plan C, adopted by F.

County G is planning to transfer all the assets and liabilities relating to Plan A to Plan B, a revised section 457 plan; among other things, Plan B includes an additional provision discussed below concerning plan-to-plan transfers under section 457(e)(10). F, now a separate entity has adopted Plan C. The Internal Revenue Service has previously issued a private letter ruling confirming the eligible status of Plans A and C.

G states in its Plan B: "If the Employer transfers the employment of a Participant to another employer eligible to adopt an eligible deferred compensation plan pursuant to Section 457 of the Code and immediately after such transfer the Participant performs substantially the same job duties and is assigned to substantially the same work location with the new employer. . . , the transferred Participant will not be deemed to have Separated from Service. In such event, with the consent of the committee or board of the eligible deferred compensation plan of the Participants' new employer. . . , the Committee may direct the transfer of the Plan Benefits of all Participants whose employment is being transferred or, alternatively, permit such Participants to each elect to transfer their Plan Benefit, to the eligible deferred compensation plan of the Participants' new employer."

Following this transfer, F generally will continue to employ E's employees in the same positions they had with E. Thus, E's employees, who participate in either or both the Plans of County G or Corporation F and who have not yet separated from service with F (or E), generally cannot receive distributions from either of their section 457 plan accounts until after they have separated from service with F or until they had attained age 70 1/2. However, provided Plan C's administrator accepts such plan-to-plan transfers, County G plans to allow F's employees with accounts in Plan B to elect under section 457(e)(10) to transfer part or all of their accounts in Plan B to Plan C.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan (as defined in section 457(b)).

Section 457(a) of the Code provides that in the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or beneficiary.

Section 457(b)(5) prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d). Section 457(d)(1)(A) provides that for a section 457 plan to be an eligible plan, the plan must have distribution requirements providing that under the plan amounts will not be made available to participants or beneficiaries earlier than i) the calendar year in which the participant attains age 70 1/2, ii) when the participant is separated from service with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations.

Section 1.457-2(h)(2) of the Income Tax Regulations provides that an employee is separated from service if there is a separation from the service within the meaning of section 402(e)(4)(A)(iii) [now section 402(d)(4)(A)(iii)], relating to lump sum distributions, and on account of the participant's death or retirement. The concept of separation from service under section 402(d)(4)(A)(iii) is illustrated by Revenue Rulings 79-336, 1979-2 C.B. 187 and 81-141, 1981-1 C.B. 204. Revenue Ruling 81-141 discusses a subsidiary that separates from its parent and continues to operate as a taxable entity with the same employees. This ruling holds that its employees are not separated from the service of the employer within the meaning of section 402(d)(4)(A). Revenue Ruling 79-336 likewise holds that a total distribution within one taxable year to an employee from an exempt profit-sharing trust due to a corporate takeover and reorganization, in which the employee remained in the same job, will not qualify as a distribution on account of a separation from service within the meaning of section 402(d)(4)(A).

Section 457(e)(10) provides that a participant is not required to include in gross income any portion of the entire amount payable to such participant solely due to the transfer of such portion from one eligible deferred compensation plan to another eligible deferred compensation plan.

Provided that Plans A, B, and C are eligible deferred compensation plans described in section 457(b) and based upon the information presented, the representations made and the plan documents furnished, we conclude as follows:

1. Neither County G's granting to the Corporation F-employed participants in Deferred Compensation Plan B the right to elect to transfer amounts in their accounts in Plan B to Plan C, nor the actual transfer of any amount from Plan B to Plan C pursuant to such election made by an employee of Corporation F will adversely affect the eligible status of either Plan B or Plan C under section 457(b).

2. Neither County G's granting the Corporation F-employed participants in Deferred Compensation Plan B the right to elect to transfer amounts in their accounts in Plan B to Plan C, nor the actual transfer of any amount from Plan B to Plan C pursuant to such election made by an employee of Corporation F will cause any amount to be includible in a participant's gross income under section 457(a). Section 457(e)(10) of the Internal Revenue Code of 1986.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than Plans A, B, and C discussed above. If the Plans are significantly modified, this ruling will not necessarily remain applicable. This ruling is directed only to E, F and G and their employees who are participants in Plans A, B, and/or C, and applies only to the Plans as submitted on May 22, 1998. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 12.04 of Rev. Proc. 98-1, 1998-1 I.R.B. 7, 47. However, when the criteria in section 12.05 of Rev. Proc. 98-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely yours,

ROBERT D. PATCHELL
Assistant Chief, Branch 1
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosure:

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