DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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The Honorable Dennis A. Cardoza
U. S. House of Representative
Washington, DC 20515-0518

Attention: Gary Palmquist

Dear Mr. Cardoza:

This letter responds to your inquiry of September 2, 2004, on behalf of the [redacted] ("City"). The letter expresses your concerns over whether the City can transfer amounts from its eligible governmental section 457(b) deferred compensation plan to a governmental defined benefit plan for the purchase of permissive service credits, without tax consequences. Your constituent's letter indicates that the City is concerned about whether the transfer would affect the plan's eligible status, or cause its employees to be taxed on the transferred amounts in the year of the transfer. We hope the following information will be of assistance to you.

Starting in 2002, changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA) permit in-service trustee-to-trustee transfers from eligible governmental section 457(b) plans to governmental defined benefit plans to purchase permissive service credit. Under section 457(e)(17) of the Internal Revenue Code (Code), in general, no amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfers are for the purchase of permissive service credit (as defined in section 415(n)(3)(A)), under such plan. Under section 415(n)(3)(A), there are specific rules for determining whether the service credit is, in fact, permissive service credit that meets the requirements of the Code. Prior to EGTTRA, a participant in an eligible section 457(b) plan was not permitted to make such a transfer.

On July 11, 2003, the IRS published final regulations (TD 9075) in the Federal Register (68 FR 41230). The regulations provide, in part, that the value of the amount transferred into the new plan must be equal to the amount transferred out of the prior plan. In addition, Treasury and IRS concluded that section 415(n) of the Code does not

apply to a such a transfer in any case in which the actuarial value of the benefit increase that results from the transfer *does not exceed* the amount transferred. Section 1.457-10(b)(8) of the regulations.

Whether an amount purchased under the defined benefit plan exceeds the amount transferred from the eligible governmental 457(b) plan and causes section 415(n) to apply to a governmental plan is an issue that can realistically be answered only on a case by case basis, with the facts and formulas available for an actuarial evaluation. To the extent the benefits purchased under the defined benefit plan were greater than the amount transferred from the eligible section 457 plan, taxable consequences could result from the excess. However, it is unlikely that the eligible status of the 457(b) plan would be affected by such an excess

Your constituent's letter seems to indicate that the [redacted] may already have applied for a ruling from the IRS on this matter. Due to disclosure issues, we do not have access to this information. A request for a private letter ruling on the section 415(n) issue would be considered by the Tax Exempt and Government Entities (TEGE) division of the Commissioner's office, and inquiries should be forwarded to that office.

I hope this information is helpful. If you have additional questions, please contact me or at .

Sincerely,

Robert D. Patchell
Chief, Qualified Plans Branch 2
Office of the Division Counsel/
Associate Chief Counsel
Tax Exempt and Government Entities