**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

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August 09, 2023

| | |
|---|---|
| County A | = |
| State B | = |
| Plan C | = |
| Category D Employees | = |
| Date 1 | = |
| Date 2 | = |

Dear :

This letter is in response to correspondence dated February 14, 2023, as supplemented by correspondence dated May 10, 2023, and May 17, 2023, submitted on behalf of County A by its authorized representatives, in which a request for a letter ruling was submitted with respect to purchase of permissive service credit in Plan C.

The following facts and representations have been submitted under penalties of perjury in support of the request:

County A is a political subdivision of State B. Effective as of Date 1, County A established Plan C, which is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code. Plan C is a defined benefit plan and is represented to be a governmental plan under section 414(d). Plan C provides for mandatory employee contributions. Plan C permits a participant to purchase permissive service credit within the meaning of section 415(n)(3) and in accordance with the requirements of section 415(n).

In connection with the establishment of Plan C, County A provided a designated election period for Category D Employees employed before Date 1 to elect to participate in Plan C. On Date 2, the County provided an additional election period for Category D Employees employed by the County before Date 1 to elect to participate in Plan C. Plan C provides that Category D Employees hired on and after Date 1 automatically participate in Plan C if otherwise eligible under the terms of Plan C.

Some Category D employees employed before Date 1 elected to participate in Plan C. However, certain Category D Employees have stated that they were not explicitly notified of the right to elect to participate in Plan C during those election periods, and therefore did not make such an election. In accordance with the terms of Plan C, when an employee failed to make an election to participate in Plan C, the employee was defaulted to non-participation status.

Based on the foregoing, County A requests rulings that:

1. An election by a former Category D Employee who was not previously a participant in Plan C to purchase prior service under Plan C with after-tax funds qualifies as a purchase of permissive service credit under section 415(n).

2. An election by a former Category D Employee who was not previously a participant in Plan C to transfer funds from another qualified plan to obtain a benefit under the Plan is an eligible rollover distribution under section 402(c) and is not subject to the purchase of permissive service credit rules under section 415(n).

3. An election by a former Category D Employee who was not previously a participant in Plan C to transfer funds from a section 403(b) or 457(b) plan to obtain a benefit under Plan C is an eligible transfer under section 415(n)(3)(D).

Section 415(n) generally provides that if a participant 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 section 415 shall be treated as met only if (1) the requirements of section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of section 415(b), or (2) the requirements of section 415(c) are met, determined by treating all such contributions as annual additions for purposes of section 415(c).

Section 415(n)(3)(A) defines “permissive service credit” as service credit –

1. recognized by the governmental plan for purposes of calculating a participant’s benefit under the plan,

2. which such participant has not received under such governmental plan, and

3. 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. Permissive service credit may include service credit for periods for which there is no performance of service, and notwithstanding (2), may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.

Section 402(c)(1) provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 403(b)(13)(A) provides that 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 transfer is for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan.

Section 457(e)(17)(A) provides that 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 transfer is for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan.

Section 415(n)(3)(D)(i) provides that in the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer), the limitations of section 415(n)(3)(B) shall not apply in determining whether the transfer is for the purchase of permissive service credit.

The first ruling request involves elections by individuals who are not participants in Plan C or employees of County A to purchase prior service under Plan C using after-tax funds. These individuals would purchase service previously performed as employees of a state political subdivision, which would have been earned under Plan C had these individuals made a timely election. Section 415(n) applies to participants. The former employees are not participants in Plan C and have never been participants in Plan C, and therefore, we conclude that such a purchase would not be a purchase of permissive service credit under section 415(n).

The second ruling request involves individuals who are not participants in Plan C or employees of County A rolling over funds from a qualified plan to obtain a benefit of prior service under Plan C and such transfer would not be subject to the permissive service credit rules of section 415(n). Section 402(c)(1)(A) does not provide that an individual who is not a plan participant or an employee of the plan sponsor may roll over

funds to obtain a benefit for prior service performed. Therefore, we conclude that such individuals would not be able to use a rollover from another qualified plan to obtain a benefit calculated on service previously performed as employees of County A.

The third ruling request involves individuals who are not participants in Plan C or employees of County A transferring funds from a section 403(b) or 457(b) plan to obtain a benefit under Plan C. Section 403(b)(13)(A) and section 457(e)(17)(A) provide for a direct trustee-to-trustee transfer to a defined benefit governmental plan only if such transfer is for the purchase of permissive service credit under section 415(n). As provided in the first ruling, section 415(n) applies to participants. The former employees are not participants in Plan C and have never been participants in Plan C. Therefore, we conclude that a transfer of funds from a section 403(b) or 457(b) plan would not be a trustee-to-trustee transfer for the purchase of permissive service credit described in section 415(n)(3)(D).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2023-1, 2023-1 I.R.B. 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2023-1, section 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter ruling.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

Amy Moskowitz
Senior Technician Reviewer, Qualified Plans Branch 3
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: