Significant Ind. No. 414.07-08

200115043

**Internal Revenue Service** Department of the Treasury

Washington. DC 20224

Contact Person:

Telephone Number:

Refer reply to: T:EP:RA:T5

Date: JAN 17 2001

Attention

Legend:

Plan X =
Employer A =
State B =

This letter is in reply to your request dated July 10, 2000, for a private letter ruling concerning the federal income tax treatment. under section 414(h)(2) of the Internal Revenue Code ("Code") of certain contributions to Plan X.

You stated in your letter State B has established Plan X. Employer A is an agency of State B. Employer A is a participating employer in Plan X. Plan X is a qualified plan under section 401 (a) of the Code. Employees of Employer A who participate in Plan X are required to contribute to Plan X. The Board of Trustees of Employer A has adopted a resolution permitting it to pick up mandatory contributions to Plan X through a reduction in salary. Participation in the pick up is mandatory. No employee may elect the option of receiving the contribution directly, and the employee contribution picked up will be designated as employer contributions.

Based on the foregoing facts and representations, you have requested that contributions made by employees of Employer A that are picked up by Employer A under provisions of the above resolution dated December 1, 1999, will not be included in the gross income of such employees.

Section 414(h)(2) of the Code provides, in part, that contributions, otherwise designated as employee contributions, shall be treated as employer contribution if such contributions are made to a plan established by a state government or a political subdivision thereof which is described in section 401 (a) and are picked up by the employing unit.

The federal income tax treatment to be accorded contributions which are picked up by

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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 districts picked up contributions to the plan are excluded from the employees' gross incomes 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 districts 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 employee's salary 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) 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 establish 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.

Because Plan X was established by State B and meets the qualification requirements under Code section 401 (a), it is a plan described under Code section 414(h)(2). Plan X and the proposed resolution of Employer M concerning the pick up of employee contributions satisfy the criteria set forth in Rev. Rul. 81-35 and Rev. Rul. 81-36 because they provide that (1 ) employee contributions picked up by Employer M will be designated as employer contributions for federal income tax purposes, and (2) Plan X participants will not be given an option to receive the contributed amounts directly rather than having them contributed to Plan X.

Accordingly, we conclude that contributions made by employees of Employer A who participate in Plan B which are picked up by Employer A under the provisions of the resolution of the Board of Trustees of Employer A dated December 1, 1 999, will not be included in the gross income of employees of Employer A for the taxable year in which such amounts are contributed to Plan X. Because we have determined that the picked up amounts are to be treated as employer contributions, such contributions are excepted from the definition of wages set forth in section 3401 (a)(12)(A) of the Code for Federal Income tax withholding purposes..

This ruling is based on the assumption that Plan X will be qualified under Code section 401 (a) at the time of the proposed contributions and distributions. Further, the pick-up is not effective for any amounts contributed to Plan X prior to the date the proposed resolution regarding the pick-up is signed.

200115043

If you have any question about this letter, you may call, (202) 283-9580, or (202) 283-9574.

Sincerely,

Tax Exempt and Government
Entities Division

Enclosures (2):
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