

Deferred Compensation Plan BOARD REPORT 14-13

Date: March 6, 2014
To: Board of Deferred Compensation Administration
From: Staff
Subject: Plan Review Private Letter Rulings and Military Leave Deferrals

*Board of Deferred
Compensation Administration
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Recommendation:

That the Board of Deferred Compensation (a) receive and file information regarding plan review private letter rulings and post military leave deferrals into the Deferred Compensation Plan; and (b) direct staff to revisit the question of whether and in what form the Plan might seek IRS review of Plan governing documents after completing a Plan Document review/update with staff and Board counsel.

Discussion:

At its January 21, 2014 meeting, the Board received training from its external tax counsel resource, Don Wellington of Steptoe and Johnson, regarding the tax and regulatory framework impacting the Deferred Compensation Plan. Two of the information items included in the training for which the Board requested follow-up concerned (a) determination private letter rulings issued by the Internal Revenue Service (IRS) with respect to whether a Section 457 plan conforms to the Internal Revenue Code (IRC); and (b) options for participants who go on military leave for making deferrals during or following their military service. Staff will address each of these topics in this report.

Determination Private Letter Rulings - Staff reviewed this matter with Mr. Wellington, who indicated that a plan document review typically involves \$10,000 in filing fees with the IRS and approximately \$10-15,000 for 20-30 hours of legal preparation fees, since there is no form. Mr. Wellington indicated that in addition to the assurance for the Plan as to its IRC conformance, having the determination letter also may make any potential IRS audit less strenuous by virtue of the Plan having engaged with the IRS first.

Staff contacted the Board's regulatory consultant, Beverly Orth of Mercer Investment Consulting, and plan administration consultant, Andrew Ness of Mercer Investment Consulting, for their feedback on this issue. Both Ms. Orth and Mr. Ness indicated that in their experience most Section 457 plan sponsors do not request private letter rulings as to general plan reviews, but that these rulings are more typically focused on specific topics that are being considered by the plan sponsor. Staff also contacted Marilyn Collister, legal counsel with Great-West Retirement Services, who provided similar feedback.

Staff posed a question to governmental agency members of the National Association of Governmental Defined Contribution Administrators (NAGDCA) and received 26 responses from other governmental plan sponsors. The responses are summarized in Attachment A.

Of the 26, 8 had requested such reviews and 18 had not. One entity which did not, the State of Florida, indicated that they submitted their Plan Document for review without filing a formal application for a private letter ruling and received comments back from the IRS nonetheless.

A pending objective for staff has been a comprehensive review and updating of the Plan Document. There are a number of provisions, including those affecting loans and beneficiary rules, that staff has been researching recently and will be working with Board counsel on updating. Staff recommends that this review process, which it believes can be completed this year, be finalized before the Board makes a decision about whether and in what form it might seek IRS review of Plan governing documents.

Military Leave Deferrals – During the training Mr. Wellington discussed provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA prohibits an employer from denying any benefit of employment on the basis of an individual’s membership, application for future membership, performance of service, or obligation for service in the uniformed services. A question arose as to whether a participant off work for reasons covered under USERRA could make up contributions he/she was unable to make while on leave by writing a check to the plan. Mr. Wellington has since researched this issue and found that this is not permitted, and that in fact the federal government had considered allowing it and decided not to do so. He stated that accordingly, an active City employee payroll reduction is the only way such contributions could be made to the plan.

Submitted by: _____
Steven Montagna

Approved by: _____
Alex Basquez

SUMMARY OF NAGDCA MEMBER SURVEY RESPONSES - IRS REVIEWS OF PLAN DOCUMENTS

Agency	Applied for PLR?	Cost	Year	Notes
Johnson County, KS	Yes	\$ 2,000	2011	
State of New York	Yes	\$14,000 application fee + unknown legal fees	Several years ago	
State of Ohio	Yes	Unknown	1983	
State of California	Yes	\$ 19,300	2009	
State of South Dakota	Yes	Unknown	1988	
L.A. County	Yes	Unknown	Routinely along w/401(k) filing	
Bay Area Rapid Transit, CA	Yes	\$ 18,000	2014	
Snohomish County, WA	Yes	\$ 22,200	2010	
State of Florida	No	n/a	n/a	Submitted Plan Document at no cost, not a PLR, and received comment from IRS anyway
State of Alaska	No	n/a	n/a	
State of Wisconsin	No	n/a	n/a	
State of North Carolina	No	n/a	n/a	
City/County of San Francisco	No	n/a	n/a	
City of Seattle, WA	No	n/a	n/a	Has not requested PLR but did pay \$10,000 for review issue related to Voluntary Correction Program
Gresham, OR	No	n/a	n/a	
Pasadena, CA	No	n/a	n/a	
Clackamas County, OR	No	n/a	n/a	
City of Dallas, TX	No	n/a	n/a	
Wichita, KS	No	n/a	n/a	
Monterrey County, CA	No	n/a	n/a	
Santa Clara Valley Transp. Auth.	No	n/a	n/a	
King County, WA	No	n/a	n/a	
Utah Transit Authority, UT	No	n/a	n/a	
City & County of Denver, CO	No	n/a	n/a	
Portland, OR	No	n/a	n/a	
Nassau County, NY	No	n/a	n/a	