

General Information Letter: All income from pension plans of a governmental agency or unit may be subtracted, whether or not the pension qualifies under IRC Section 457.

September 17, 2009

Dear:

This is in response to your letter dated August 25, 2009. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

On behalf of the City of CITY, Finance management is requesting a General Information Letter (GIL) or Private Letter Ruling (PLR) to provide confirmation or clarification whether distributions from all governmental Section 457 plans continue to be excluded from Illinois income tax per Item 5, IT 01-0064-GIL, previously issued August 20, 2001 (see attached copy available via internet):

"All amounts included within the provisions of IRC Section 457 are subtracted from base income by section 203(a)(2)(F) of the IITA except for exempt organizations under IRC 457."

Per the attached communication the City of CITY received from an Internal Revenue Service Tax Specialist, our \$10,000 per year, voluntary separation initiative has been classified as an Internal Revenue Code (IRC) Section 457(f) nonqualified deferred compensation plan for federal tax reporting. Since IRC Section 409A was effective subsequent to the issuance of IT 01-0064-GIL, and 457(f) plans are subject to provisions of 409A, please provide responses for:

- 1) Are IRC 457 governmental plan distributions currently excluded from Illinois income tax?
- 2) If so, does this Illinois income tax exclusion apply to 457(f) plans?

We would appreciate your prompt response to our inquiry since our voluntary separation initiative participants could retire as early as September 16, 2009. Prior to issuing your response, please disclose any fees the City would incur.

RULING

Section 203(a)(2)(F) provides the following deduction in the computation of an individual's Illinois base income:

An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto. (Emphasis added)

As the above language indicates, the deduction allowed for distributions from government retirement plans does not depend on whether the plan is a qualified plan under federal income tax law. A government plan that qualifies as an eligible deferred compensation plan as defined in IRC Section 457(b) is eligible for deduction under IITA Section 203(a)(2)(F) because the plan constitutes a "retirement or disability plan for employees of any governmental agency or unit." Similarly, a plan that is taxed under IRC Section 457(f) because the plan is not an eligible deferred compensation plan may still qualify for the deduction under IITA Section 203(a)(2)(F) provided that the deferred compensation arrangement is a retirement or disability plan for government employees.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's website at www.Iltax.com.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)