



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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CC:TEGE:EOEG:ET2  
CONEX-113847-07

UIL: 3121.02-07

The Honorable Bill Nelson  
United States Senator  
Landmark Two  
225 East Robinson Street, Suite 410  
Orlando, Florida 32801

Dear Senator Nelson:

Re:

This is in response to your request for our assistance on behalf of your constituent who is concerned about the distribution rules of the deferred compensation plan in which he is currently participating.

The letter indicates that he is currently a participant in an Internal Revenue Code (IRC) section 457(b) "eligible deferred compensation plan" maintained by a county school board. The letter also indicates that the section 457(b) plan is intended to qualify as a "retirement system" within the meaning of Code section 3121(b)(7)(F). If an employee participates in a section 3121(b)(7)(F) retirement system, commonly called a FICA Replacement Plan, the employee's wages are not subject to Federal Insurance Contributions Act (FICA) taxation.

The FICA replacement plan regulations provide that a FICA replacement plan may include a section 457(b) plan. However, only section 457(b) plans that meet certain requirements can be FICA Replacement Plans. FICA replacement plans differ from the other types of deferred compensation plans because FICA Replacement Plans are required to provide retirement benefits that are intended to take the place of Social Security benefits. In-service emergency or hardship distributions would defeat this purpose by diminishing the benefits intended for retirement purposes. Therefore, deferred compensation plans which provide for in-service distributions prior to a termination of employment may not be FICA Replacement Plans.

I hope this information is helpful to . If you have any questions, please  
contact me or of my staff at .

Sincerely,

Marie Cashman  
Special Counsel, (Exempt  
Organizations/Employment Tax/Government  
Entities)  
(Tax Exempt & Government Entities)