



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable John R. Carter
Member, U.S. House of Representatives
1717 North IH, Suite 303
Round Rock, Texas 78664

Attention:

Dear Congressman Carter:

I am responding to your inquiry dated March 8, 2011, on behalf of your constituent, _____, employer withholds amounts from his pay as contributions to a 457 plan.

Unfortunately, I cannot address _____ particular situation. However, I have reviewed the facts provided and hope the following general information is helpful.

Wages an employer pays to an employee are generally subject to tax under the Federal Insurance Contributions Act (FICA), which includes taxes for social security benefits and Medicare. State and local government employees can be exempt from the social security portion of FICA taxes only if they are covered under a retirement plan [section 3121(b)(7)(F) of the Internal Revenue Code (the Code)]. Therefore, a state or local government employer might require its employees to participate in a retirement plan the employer established.

One type of retirement plan that a state or local government employer can establish for its employees to be exempt from social security tax is an eligible deferred compensation plan under section 457(b) of the Code. Because this type of plan is exempt from the Employee Retirement Security Act of 1974 (ERISA), the Employee Benefits Security Administration, an agency within the Department of Labor, does not regulate it. However, a 457 plan must meet the requirements of section 457 of the Code which the Internal Revenue Service administers.

One requirement for a state or local government 457 plan is that it must hold in trust the participant contributions to the plan, as well as the related investments and earnings, for

the exclusive benefit of the plan participants and their beneficiaries. The employer cannot use the trust assets for any other purpose.

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

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2 (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)