

Part I

Section 501.--Exemption From Tax on Corporations, Certain Trusts, Etc.

26 CFR 1.501(a)-1: Exemption from taxation.

(Also, §§ 457; 1.457-8.)

Rev. Rul. 2004-67

PURPOSE

This revenue ruling extends the ability to participate in group trusts described in Rev. Rul. 81-100, 1981-1 C.B. 326, to eligible governmental plans under § 457(b) of the Internal Revenue Code and clarifies the ability of Roth individual retirement accounts described in § 408A and deemed individual retirement accounts described in § 408(q) to participate in these group trusts. In addition, this revenue ruling provides related model language for eligible governmental plans under § 457(b).

ISSUE

Whether the assets of eligible governmental plan trusts described in § 457(b) may be pooled with the assets of a group trust described in Rev. Rul. 81-100, without affecting the tax status of the eligible governmental plan trust or the group trust (including its current participants).

LAW AND ANALYSIS

Section 501(a) provides, in part, that a trust described in § 401(a) is exempt from income tax.

Section 401(a)(1) provides that a trust or trusts created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries is qualified under § 401(a) if contributions are made to the trust or trusts by the applicable employer, or employees, or both for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated in accordance with such plan. Section 401(a)(2) provides, in part, that under each trust instrument it must be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the plan and the trust or trusts, for any part of the corpus or income of the trust, to be used for or diverted to purposes other than for the exclusive benefit of the employees or their beneficiaries.

Section 401(a)(24) provides that any group trust that otherwise meets the requirements of § 401(a) will not fail to satisfy such requirements due to the participation or inclusion of a plan or governmental unit described in § 818(a)(6) in the group trust. Section 818(a)(6) provides, in part, that for these purposes the trust of a pension plan contract includes a governmental plan within the meaning of § 414(d) and an eligible deferred compensation plan within the meaning of § 457(b).

Section 401(f) provides that a custodial account, an annuity contract and certain other contracts issued by an insurance company will be treated as a qualified trust if the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under § 401, and, if the assets in any such custodial account are held by a bank or another person who demonstrates that he will hold the assets in a manner consistent with the requirements of § 401.

Section 408(e) provides for the exemption from taxation of an individual retirement account that meets the requirements of § 408. Section 408(a)(5) provides that the assets of an individual retirement account may not be commingled with other property except in a common trust fund or common investment fund.

Section 408A provides that, except as otherwise provided in § 408A, a Roth IRA is treated for purposes of the Code as an individual retirement plan, which includes an individual retirement account that meets the requirement of § 408. Consequently, a Roth IRA that is an individual retirement account is exempt from tax under § 408(e).

Section 408(q) provides, in part, that if a qualified employer plan, as defined in § 408(q)(3)(A), elects to allow employees to make voluntary employee contributions to a separate account established under the plan and, under the terms of the qualified employer plan, the account meets the requirements of § 408 or 408A for an individual retirement account, then that account is treated as an individual retirement account (deemed individual retirement account), and not as a qualified employer plan. An individual retirement account described in § 408(q) is exempt from taxation under § 408(e).

Rev. Rul. 81-100 holds that if certain requirements are satisfied, a group trust is exempt from taxation under § 501(a) with respect to its funds that equitably belong to participating trusts described in § 401(a) and also is exempt from taxation under § 408(e) with respect to its funds that equitably belong to individual retirement accounts that satisfy the requirements of § 408. Also, the status of individual trusts as qualified under § 401(a), or as meeting the requirements of § 408 and as being exempt from tax under § 501(a) or § 408(e), are not affected by the pooling of their funds in a group trust.

Section 457 provides that compensation deferred under an eligible deferred compensation plan of an eligible employer that is a State or political subdivision, agency, or instrumentality thereof (an eligible governmental plan) and any income attributable to the amounts deferred, is includible in gross income only in the taxable

year in which it is paid to the plan participant or beneficiary. Section 457(g)(1) requires an eligible governmental plan under § 457(b) to hold all assets and income of the plan in a trust for the exclusive benefit of participants and their beneficiaries. Section 457(g)(2) provides, in part, that a trust described in § 457(g)(1) is treated as an organization exempt from federal income tax under § 501(a). Section 457(g)(3) provides that custodial account and contracts described in § 401(f) are treated as trusts under rules similar to the rules under § 401(f).

This revenue ruling extends the holding of Rev. Rul. 81-100 to eligible governmental plans described in § 457(b). Therefore, if the requirements below are satisfied, the funds from qualified plan trusts, individual retirement accounts (including a Roth individual retirement account described in § 408A and a deemed individual retirement account described in § 408(q)) that are tax-exempt under § 408(e), and eligible governmental plan trusts described in § 457(b) and § 457(g) may be pooled without adversely affecting the tax status of the group trust or the tax status of the separate trusts.

HOLDING

The assets of eligible governmental plan trusts described in § 457(b) may be pooled with the assets of a group trust described in Rev. Rul. 81-100 without affecting the tax status of the eligible governmental plan trust or the group trust (including its current participants).

Accordingly, under Rev. Rul. 81-100 and this revenue ruling, if the five criteria below are satisfied, a trust that is part of a qualified retirement plan, an individual retirement account (including a Roth individual retirement account described in § 408A and a deemed individual retirement account described in § 408(q)) that is exempt from taxation under § 408(e), or an eligible governmental plan under § 457(b) may pool its assets in a group trust without adversely affecting the tax status of any of the separate trusts or the group trust. For this purpose, a trust includes a custodial account that is treated as a trust under § 401(f), under § 408(h), or under § 457(g)(3).

- (1) The group trust is adopted as a part of each adopting employer's plan or each adopting individual retirement account.
- (2) The group trust instrument expressly limits participation to pension, profit-sharing, and stock bonus trusts or custodial accounts qualifying under § 401(a) that are exempt under § 501(a); individual retirement accounts that are exempt under § 408(e); and eligible governmental plan trusts or custodial accounts under § 457(b) that are exempt under § 457(g) (adopting entities).
- (3) The group trust instrument prohibits any part of its corpus or income that equitably belongs to any adopting entity from being used for or diverted to any purpose other than for the exclusive benefit of the employees (and the individual

for whom an individual retirement account is maintained) and their beneficiaries who are entitled to benefits under such adopting entity.

(4) The group trust instrument prohibits assignment by an adopting entity of any part of its equity or interest in the group trust.

(5) The group trust is created or organized in the United States and is maintained at all times as a domestic trust in the United States.

MODEL AMENDMENTS

There are two model amendments set forth below. One is for those group trusts that have received favorable determination letters from the Service that the group trust satisfies Rev. Rul. 81-100. The other is for those trusts of eligible governmental plans under § 457(b) that have received a letter ruling from the Service (in each instance issued prior to July 12, 2004).

AMENDMENT 1 - FOR GROUP TRUST

A sponsor of a group trust that satisfies Rev. Rul. 81-100 may amend its group trust to include the model language below to reflect this revenue ruling:

“This group trust is operated or maintained exclusively for the commingling and collective investment of funds from other trusts that it holds. Notwithstanding any contrary provision in this group trust, the trustee of this group trust is permitted, unless restricted in writing by the named fiduciary, to hold in this group trust funds that consist exclusively of trust assets held under plans qualified under Code section 401(a), individual retirement accounts that are exempt under Code section 408(e), and eligible governmental plans that meet the requirements of Code section 457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code section 401(f) or under Code section 457(g)(3).

“For purposes of valuation, the value of the interest maintained by the fund with respect to any plan or account in such group trust shall be the fair market value of the portion of the fund held for that plan or account, determined in accordance with generally recognized valuation procedures.”

RELIANCE BY TRUSTEES WITH PRIOR DETERMINATION LETTER

A trustee entitled to rely on a favorable determination letter issued to it prior to July 12, 2004, regarding eligibility of its group trust under Rev. Rul. 81-100 will not lose its right to rely on its determination letter merely because it adopts Model Amendment 1 set forth above in this revenue ruling on a word-for-word basis (or adopts an amendment that is substantially similar in all material respects). The group trust sponsor may adopt Model Amendment 1 on a word-for-word basis (or adopt an amendment that is substantially similar in all material respects) and continue to rely on the previously

issued determination letter regarding its group trust without filing another request with the Service for a new determination letter.

A sponsor that satisfies the above requirements and amends its group trust to include Model Amendment 1 on a word-for-word basis (or adopts an amendment that is substantially similar in all material respects) will also not lose its right to rely on its prior determination letter merely because it becomes necessary, as a result of the adoption of such model amendment (or an amendment that is substantially similar in all material respects), to delete a prior provision that is inconsistent with the model amendment so adopted (or an amendment that is substantially similar in all material respects that is so adopted).

Generally, the group trust instrument will provide that amendments to the group trust will automatically pass through to the trusts of qualified plans under § 401(a); individual retirement accounts that are exempt under § 408(e); and trusts of eligible governmental plans under § 457(b). However, a group trust that has received a favorable determination letter under Rev. Proc. 2004-6, 2004-1 I.R.B. 204, (or its predecessors) that does not contain such a pass-through provision may not adopt Model Amendment 1 and automatically continue to rely on its determination letter. In addition, further guidance will be issued to address the transition necessary to bring into compliance a group trust that has received a favorable determination letter under Rev. Proc. 2004-6, 2004-1 I.R.B. 204, (or its predecessors) that does not comply with this revenue ruling.

AMENDMENT 2 - FOR ELIGIBLE GOVERNMENTAL PLAN UNDER § 457(b)

A plan sponsor of a trust that funds an eligible governmental plan under § 457(b) may amend the trust agreement to include the model language below to reflect this revenue ruling:

“Notwithstanding any contrary provision in the instrument governing the [NAME OF ELIGIBLE GOVERNMENTAL PLAN UNDER § 457(b)], the plan trustee may, unless restricted in writing by the named fiduciary, transfer assets of the plan to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code section 401(a), individual retirement accounts that are exempt under Code section 408(e), and eligible governmental plans that meets the requirements of Code section 457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code section 401(f) or under Code section 457(g)(3).

“For purposes of valuation, the value of the interest maintained by the [NAME OF ELIGIBLE GOVERNMENTAL PLAN UNDER §457] in such group trust shall be the fair market value of the portion of the group trust held for the [NAME OF

ELIGIBLE GOVERNMENTAL PLAN UNDER § 457(b)], determined in accordance with generally recognized valuation procedures.”

RELIANCE BY EMPLOYER ON PRIOR § 457(b) RULING

An employer described in section 457(e)(1)(A) entitled to rely on a favorable private letter ruling issued to it prior to July 12, 2004 regarding the eligibility of its plan under § 457(b) will not lose its right to rely on its letter ruling merely because it adopts Model Amendment 2 set forth above on a word-for-word basis (or adopts an amendment that is substantially similar in all material respects). Such an employer may adopt Model Amendment 2 on a word-for-word basis (or adopt an amendment that is substantially similar in all material respects) and continue to rely on the previously issued letter ruling regarding its § 457(b) plan without filing another request with the Service for a new letter ruling.

An employer described in § 457(e)(1)(A) that satisfies the above requirements and amends the trust of its eligible governmental plan under § 457(b) to include Model Amendment 2 on a word-for-word basis (or adopts an amendment that is substantially similar in all material respects) will not lose its right to rely on its prior letter ruling merely because it becomes necessary as a result of the adoption of such model amendment (or an amendment that is substantially similar in all material respects), to delete a prior provision that is inconsistent with the model amendment so adopted.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 81-100 is clarified and modified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Dana A. Barry of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll free call). Ms. Barry may be reached at (202) 283-9888 (not a toll-free call).