

Part IV. – Items of General Interest

Correction under Rev. Rul. 2004-57

Announcement 2004-52

Rev. Rul. 2004-57, which was released today, provides that an eligible governmental plan under § 457(b) of the Internal Revenue Code must be established and maintained by an eligible employer as defined under § 457(e)(1)(A). A plan established before June 14, 2004, that does not satisfy the requirements of the revenue ruling solely as a result of being established and maintained by a labor organization instead of being established and maintained by an eligible governmental employer may nonetheless be treated as established and maintained by an eligible governmental employer if:

(1) contributions to the plan cease with respect to payroll periods that begin after December 31, 2004, and

(2) either of the following corrective actions is completed by December 31, 2005:

(a) The eligible employer as defined under § 457(e)(1)(A) adopts the plan, or

(b) The accounts of the employees under the plan are transferred (not rolled over) into an eligible governmental plan maintained by the eligible employer as defined under § 457(e)(1)(A) in accordance with the requirements of § 1.457-10(b)(4) of the Income Tax Regulations. For this limited purpose, the transferor plan will be treated as an eligible governmental plan of the same employer.

Even if such correction is made, however, the plan will not be treated as an eligible governmental plan under § 457(b) unless it also satisfies all of the requirements for such plans under § 457 and the regulations thereunder (other than the requirement that the plan be established and maintained by an eligible employer with respect to periods before December 31, 2005).

If the corrective actions described above fail to be completed by December 31, 2005, the plan will be treated as an ineligible deferred compensation arrangement that is subject to § 457(f) of the Code. Under § 457(f), benefits may be currently includible in income even if they are not currently available to the participants under the terms of the plan. Likewise, if the plan is liquidated before December 31, 2005, without corrective action as described above, distributions from the plan will be taxed in accordance with § 457(f). A funded plan solely established by a labor organization after June 14, 2004, that does not satisfy the requirements of Rev. Rul. 2004-57 will be treated as an arrangement subject to § 457(f).

For further information, please call the Employee Plans' taxpayer assistance telephone service at 1 (877) 829-5500 (a toll free call) between the hours of 8:00 AM and 6:30 PM Eastern time, Monday through Friday.