

**ALI-ABA Retirement, Deferred Compensation, and Welfare Plans  
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**Regulatory Developments:**

**Governmental Plans**

**July 1, 2004 through July 15, 2005**

**by**

**Terry A. M. Mumford and Mary Beth Braitman  
Ice Miller**

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**July 1, 2004 through July 15, 2005**  
by  
**Terry A.M. Mumford and Mary Beth Braitman<sup>1</sup>**  
**Ice Miller**

The purpose of this outline is to summarize regulatory developments that may be of interest to practitioners who work with governmental employers and governmental pension plans. The period covered in this outline is July 1, 2004 through July 15, 2005 – a very busy and productive time at the Internal Revenue Service. These materials also include an addendum that deals with Department of Labor guidance. The summaries are provided in reverse chronological order by topic.

**A. Employee Benefit Plans (General)**

- IRS Proposed Regulations on Use of Electronic Technologies for Providing Employee Benefit Notices and Transmitting Employee Benefit Elections and Consents, (REG-138362-04), July 14, 2005. The proposed regulations provide guidance on using electronic media to provide certain notices, elections or consents with respect to employee benefit plans.
- IRS Notice 2005-40, 2005-21 I.R.B. 1088, May 23, 2005. This notice provides guidance on the election available to certain multiemployer plans to defer charges with respect to net experience losses under Code Sec. 412.
- IRS Notice 2005-5, 2005-3 I.R.B. 1, January 18, 2005. This notice provides guidance on the automatic rollover provisions under Code Sec. 401(a)(31)(B). The notice reflects the changes in the law made by EGTRRA of 2001.
- IRS Notice 2005-1, 2005-2 I.R.B. 274, January 10, 2005. Notice 2005-1 provides guidance on amounts deferred under a nonqualified deferred compensation plan under new Code Sec. 409A, as added by the American Jobs Creation Act of 2004.
- IRS News Release 2005-1, January 3, 2005. In this news release, the IRS highlighted a number of the changes discussed in this outline.
- IRS Notice 2004-84, 2004-52 I.R.B. 569, December 27, 2004. This notice contains a cumulative list of the 2004 changes in pension plan qualification requirements.
- IRS Final Regulations on 401(k) Cash or Deferred Arrangements which provide for Code Sec. 401(m) Matching or Employee Contributions (T.D. 9169), Dec. 29, 2004. The final regulations provide guidance for retirement plans containing cash or deferred arrangements under 401(k) and providing for matching contributions or employee contributions under Code Sec. 401(m).

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<sup>1</sup> These materials were prepared with the assistance of Eliza R. McCart, associate, Ice Miller.

- IRS Proposed Regulations on Phased Retirement Programs. (REG-114726-04), November 10, 2004. The IRS proposes a phased retirement concept and seeks additional comments.
- IRS Information Release 2004-127, October 20, 2004. The IRS announcement of all adjusted limits for plans for 2005.
- PLR 200442037, July 22, 2004. Proposed spin-off of defined contribution plan will satisfy the requirements of Code Sec. 414(l), will not create a taxable event for participants, and will not be deemed a reversion of funds to the Plan sponsor.

**B. 414(d) – Governmental Plans**

- See Notice 2005-58, below, under "457 Governmental Plans (General)."
- PLR 200514024, April 27, 2005. Relying on Rev. Rul. 89-49, the IRS allowed licensed peace officers of a tribe to be in a state governmental plan without affecting the state plan's position as a governmental plan.
- PLR 200520039, February 22, 2005. Academy established by state statute using property donated by an individual that receives funding primarily from the state and local municipalities, is controlled by local municipalities, the state department of education and other state regulations is a governmental plan under Code Sec. 414(d).
- PLR 200520036, May 20, 2005. University that established plan for its employees was an agency or instrumentality of the state, and the plan is a governmental plan under Code Sec. 414(d).

**C. 457 Governmental Plans (General)**

- Notice 2005-58, 2005-33 IRB, July 21, 2005. Treasury and the IRS intend to publish guidance regarding the meaning of the term "governmental plan" under 414(d). Until that guidance is published, a plan that is currently in effect that is maintained by a federal credit union and is intended to be an eligible nonqualified deferred compensation plan of a non-governmental tax-exempt entity under 457(b) will not fail to be a 457(b) plan solely because it is established and maintained by a federal credit union. Further such a federal credit union may treat 457(f) as applying to any nonqualified plan it maintains (other than an eligible 457(b) plan.)
- PLR 200525012, June 24, 2005. A state's model deferred compensation plan that may be adopted by state and local governmental entities is an eligible 457(b) plan and trust under Code Sec. 457(g), and amounts deferred (including any earnings) will be includible in gross income in year paid to participant or beneficiary.
- PLR 200524016 and PLR 200524017, June 17, 2005. County plan with domestic partner provisions will fail to be operated in compliance with Code Sec. 457(b) if

the domestic partner provisions are not interpreted and applied in a manner consistent with Defense of Marriage Act. Furthermore, county's plan is a retirement system for purposes of FICA.

- PLR 200524016, June 17, 2005. Collectively bargained deferred compensation plan for county is an eligible Code Sec. 457(b) plan and trust under Code Sec. 457(g), and amounts deferred (including any earnings) will be includible in gross income in year paid to participant or beneficiary.
- PLR 200520005, May 20, 2005. State's deferred compensation plan is an eligible 457(b) plan and trust under Code Sec. 457(g), amounts deferred (including any earnings) will be includible in gross income in year paid to participant, and plan assets designed to provide a fixed annuity or other guaranteed return held in a custodial account, annuity contract, or other contract issued by an insurance company and described in Code Sec. 401(f), will be treated as a trust under rules similar to Code Sec. 401(f).
- PLR 200519022, May 13, 2005. Eligible employer's deferred compensation plan is an eligible Code Sec. 457(b) plan and trust under Code Sec. 457(g), and amounts deferred (including any earnings) will be includible in gross income in year paid to participant.
- PLR 200519021, May 13, 2005. Eligible employer's deferred compensation plan is an eligible Code Sec. 457(b) plan and trust under Code Sec. 457(g), and amounts deferred (including any earnings) will be includible in gross income in year paid to participant; plan provisions allowing transfers between the plan and other 457(b) plans will not cause amounts to be includible in income under Code Sec. 457(a).
- PLR 200519020, May 13, 2005. Eligible employer's deferred compensation plan is an eligible Code Sec. 457(b) plan and trust under Code Sec. 457(g), and amounts deferred (including any earnings) will be includible in gross income in year paid to participant; plan provisions allowing transfers between the plan and other 457(b) plans will not cause amounts to be includible in income under Code Sec. 457(a).
- PLR 200518007, May 6, 2005. Political subdivision's deferred compensation plan is an eligible Code Sec. 457(b) plan and trust under Code Sec. 457(g), and amounts deferred (including any earnings) will be includible in gross income in year paid to participant.
- PLR 200408005, February 25, 2005. Municipality's deferred compensation plan is an eligible Code Sec. 457(b) plan and trust under Code Sec. 457(g), and amounts deferred (including any earnings) will be includible in gross income in year paid to participant or beneficiary.
- Rev. Proc. 2004-56, 2004-35 I.R.B. 376, August 30, 2004. This revenue procedure provides guidance and model amendments for nonqualified deferred

compensation plans under Code Sec. 457(b). The model amendments reflect the changes in the law made by EGTRRA of 2001.

- PLR 200450010, August 18, 2004. When an employee makes an irrevocable election, before the end of the calendar year, to cash out all or part of the sick leave in his or her sick leave bank, it does not result in taxable income until the year in which the amounts are actually paid or otherwise made available.

**D. 403(b) Plans (General)**

- IRS Temporary Regulations Defining Salary Reduction Agreement and Providing Guidance to Employers Purchasing Sec. 403(b) Annuities (T.D. 9159), November, 16, 2004. These temporary regulations provide guidance for 403(b) arrangements.
- Proposed Rules (REG-155608-02) Providing Updated Guidance on Code Sec. 403(b) Tax-Sheltered Annuity Contracts, November 16, 2004. The proposed rules provide guidance with respect to 403(b) arrangements.

**E. IRAs (Roth; Deemed IRAs; Nonbank Trustees)**

- Proposed Regulations on Roth IRAs (REG 122847-04), March 2, 2005. Unlike traditional IRAs, Roth contributions are taxable and includible in participants' gross income. However, earnings grow tax-free and distributions of Roth contributions (and earnings) are tax-free and excluded from gross income.
- PLR 200510032, December 16, 2004. Proposed trustee-to-trustee transfers of decedent's account balances under state retirement system and county Code Sec. 457(b) plan into spouse's IRA are eligible rollovers.
- IRS Announcement 2004-72, October 12, 2004. This announcement provides a list of nonbank entities approved by the IRS to serve as trustees and custodians.
- Final Regulations on Deemed IRAs in Qualified Retirement Plans (T.D. 9142), July 22, 2004. These regulations reflect changes made to the law by EGTRRA and by the Job Creation and Work Assistance Act of 2002. The final regulations confirm that the Deemed IRA portion of a qualified retirement plan is subject to the rules that apply to IRAs generally rather than the rules that apply to qualified retirement plans. The final regulations do not require that a qualified retirement plan's Deemed IRA assets and other assets be held in separate trusts.
- Temporary Regulations on Deemed IRAs in Governmental Plans/Qualified Nonbank Trustee Rules (REG-101447-04), July 22, 2004. The temporary regulations set forth special rules for a governmental unit that maintains a plan qualified under Code Sec. 401(a), 403(a), 403(b), or 457 to qualify as a nonbank trustee for deemed IRAs under Code Sec. 408(q).

## **F. IRC 415 Limits**

- PLR 200523025, March 18, 2005. Transfers from state's 401(k) plan to purchase service credit under another governmental defined benefit plan do not constitute impermissible distributions under Code Sec. 401(k)(2)(B), will not result in a taxable event, will not be subject to withholding, and will not be counted for Code Sec. 415(c) purposes.
- IRS Proposed Regulations on Limits on Benefits and Contributions Under Qualified Plans, REG 130241-04, May 31, 2005. These proposed regulations provide guidance regarding limits on contributions and benefits under Code Sec. 415.
- IRS Notice 2004-78, 2004-48 I.R.B. 879, November 29, 2004. This notice provides guidance regarding the actuarial assumptions used to determine whether a defined benefit plan, subject to the minimum present value requirements of Code Sec. 417(e)(3), satisfies Code Sec. 415 limitations. The guidance reflects the changes in the law made by the PEFA 2004.
- IRS Notice 2004-72, 2004-46 I.R.B. 840, November 15, 2004. This notice sets forth certain cost-of-living adjustments effective January 1, 2005, applicable to the dollar limits on benefits under qualified defined benefit pension plans. See also IRS News Release on Pension Plan Limitations for 2005 (IR-2004-127).
- PLR 200452039, September 30, 2004. Maximum benefit under Code Sec. 415 must take into account the value of the cost of living adjustment provided for under the plan.
- PLR 200446026, August 19, 2004. Contributions of settlement proceeds from litigation regarding a merger will not be considered excess contributions under Code Sec. 4972, will not be subject to the limitations under Code Sec. 415(c), distributions will be eligible for a 402(c) tax-deferred rollover for 60 days commencing on the date a distribution is received.

## **G. Qualified Excess Benefit Arrangements (QEBA) (415(m))**

- PLR 200526025, April 8, 2005. County's Code Sec. 415(c) excess benefit plan and trust meet requirements of Code Sec. 415(m) for qualified governmental excess benefit arrangements and pursuant to doctrine of constructive receipt benefits paid under the QEBA will not be taxable to participants until actually paid or made available.

## **H. Pick-Ups**

- PLR 200529011, July 22, 2005. Mandatory contributions picked up by municipal employers will be treated as employer contributions, will not be includible in employee's gross income, and will not be subject to withholding.

- PLR 200527023, July 8, 2005. Mandatory contributions to a multiple employer public employee retirement system picked up by municipal employers will be treated as employer contributions, will not be includible in employee's gross income, will not be subject to withholding, and will not be included as annual additions for purposes of § 415(c).
- PLR 20050036, February 22, 2005. State's plan is a retirement system for purposes of FICA, assuming that employees may not alter or amend their one-time irrevocable election for 414(h)(2) purposes; mandatory contributions picked up by a State university will be treated as employer contributions for federal tax purposes and will not be includible in employee's gross income, nor are the amounts subject to withholding.
- PLR 200504039, January 28, 2005. Where city adopted a resolution allowing employees to vote to participate in city's defined benefit plan, employees may not alter or amend their election to not participate because election is considered a one-time irrevocable election for 414(h)(2) purposes; mandatory contributions picked up by city will be treated as employer contributions for federal tax purposes and will not be includible in employee's gross income, nor are the amounts subject to withholding.
- PLR 200502047, October 18, 2004. Mandatory contributions picked up by county will be treated as employer contributions for federal tax purposes and will not be includible in employee's gross income, nor are the amounts subject to withholding.
- PLR 200450054, September 13, 2004. Mandatory contributions picked up by municipality will be treated as employer contributions for federal tax purposes and will not be includible in employee's gross income, nor are the amounts subject to withholding.
- PLR 200445037, August 12, 2004. Mandatory contributions picked up by state college will be treated as employer contributions for federal tax purposes and will not be includible in employee's gross income, nor are the amounts subject to withholding.
- PLR 200445036, August 10, 2004. Mandatory contributions picked up by political subdivision of a state will be treated as employer contributions for federal tax purposes and will not be includible in employee's gross income, nor are the amounts subject to withholding.
- PLR 200440028, July 8, 2004. Mandatory contributions picked up by political subdivision of a state pursuant to an irrevocable written election will be treated as employer contributions and will not be includible in the employees' income.
- PLR 200440024, July 8, 2004. Mandatory contributions picked up by political subdivision of a state pursuant to an irrevocable written election will be treated as employer contributions and will not be includible in the employees' income.

- PLR 200439048, July 2, 2004. Mandatory contributions picked up by county agency will be treated as employer contributions for federal tax purposes and will not be includible in employee's gross income, nor are the amounts subject to withholding.

**I. Distribution Rules Including IRC §§ 72, 402, and 401(a)(9)**

- PLR 200521037, May 27, 2005. Mandatory contributions to police pension fund picked up by municipal employer will be treated as employer contributions and will not be includible in employee's gross income, are not subject to withholding, and distributions of picked-up amounts, whether distributed as a retirement pension or as a lump sum, will be taxable under Code Sec. 402(a).
- PLR 200517004 and PLR 200517005, April 29, 2005. Participant loans made in accordance with terms of state's model Code Sec. 457(b) plan will not be treated as distributions.
- PLR 200523025, March 18, 2005. Transfers from state's 401(k) plan to purchase service credit under another governmental defined benefit plan do not constitute impermissible distributions under Code Sec. 401(k)(2)(B), will not result in a taxable event, will not be subject to withholding, and will not be counted for Code Sec. 415(c) purposes.
- PLR 200511028, December 22, 2004. Single sum payment of additional retirement benefits accrued under optional procedure offered to participants in governmental plan constitutes lump sum paid in connection with annuity under Code Sec. 72(d)(1)(D) and is an eligible rollover under Code Sec. 402(c)(4).
- DOL Automatic Rollover Safe Harbor Regulations, 29 C.F.R. 2550, September 28, 2004 and IRS Notice 2005-5, 2005-3 I.R.B. 1, January 18, 2005. Notice 2005-5 provides guidance on the automatic rollover provisions under Code Sec. 401(a)(31)(B). This notice reflects the changes in the law made by EGTRRA of 2001.
- IRS Proposed Regulations on Distributions From Pension Plan Under Phased Retirement Program, REG-114726-04, November 10, 2004. If adopted, these proposed rules would govern distributions from a defined benefit plan, before an employee attains normal retirement age, under phased retirement program.
- PLR 200453020, October 7, 2004. Pursuant to Code Sec. 402(c)(3)(B), IRS waived 60-day rollover requirement where taxpayer's noncompliance with rollover rule was due to reliance on advice from financial institutions, so taxpayer was granted 60 days, from the date of the letter, to contribute the amount into an IRA.
- PLR 200450056, September 15, 2004. A lump sum payment from State's plan was considered eligible for the special tax treatment under Code Sec. 72(e)(8)(D)

and was treated as being received before the annuity start date. The payment was taxable to the extent it exceeded the participant's investment.

- PLR 200450053, September 15, 2004. A lump sum payment from State's plan was considered eligible for the special tax treatment under Code Sec. 72(e)(8)(D) and was treated as being received before the annuity start date. The payment was taxable to the extent it exceeded the participant's investment.
- PLR 200447040, August 24, 2004. This ruling determined that (1) proposed disclaimers were qualified disclaimers for purposes of Code Sec. 2518, (2) the estate's residue was treated as passing from the decedent to the spouse for purposes of Code Sec. 2056, (3) the spouse will be treated as having received decedent's interest in the State's SERS directly from the decedent for purposes of Code Sec. 402, (4) the spouse is eligible to roll over the distribution into an IRA in the spouse's name, and (5) the spouse will not have to include any amount rolled over to an IRA in her gross income for the year of distribution.
- PLR 200445041, August 10, 2004. Pursuant to Code Sec. 408(d)(3)(I), IRS waived 60-day rollover requirement where, due to taxpayer's misunderstanding of the financial institution due to the fact English was a "tertiary" language. Therefore, taxpayer is eligible to rollover the distribution within 60 days to another IRA.
- PLR 200444032, August 5, 2004. In spite of the general rule of Code Sec. 403(b)(8)(A), the IRS concluded that it would treat payments from a decedent's estate to a spouse as coming directly from the plan and not from the decedent's estate. Therefore, taxpayer is eligible to rollover the distribution within 60 days to another IRA.
- PLR 200443040, July 29, 2004. Pursuant to Code Sec. 402(c)(3)(B), IRS waived 60-day rollover requirement where a financial institution informed taxpayers there placing the distribution in a savings account would be sufficient; taxpayer was granted 60 days, from date the letter was issued, to make a contribution which would otherwise be considered a timely rollover contribution.
- PLR 200443034, July 29, 2004. Pursuant to Code Sec. 402(c)(3)(B), IRS waived 60-day rollover requirement where a financial institution informed taxpayers there was no time limitation on their rollover; taxpayer was granted 60 days, from date the letter was issued, to make a contribution which would otherwise be considered a timely rollover contribution.
- PLR 200442035, July 23, 2004. Pursuant to Code Sec. 402(c)(3)(B), IRS waived 60-day rollover requirement, where participant mistakenly believed she was rolling over her retirement account when, in fact, the amount was distributed to her. However, the taxpayer retained the distribution check without cashing it. Taxpayer was granted 60 days, from date the letter was issued, to make a contribution which would otherwise be considered a timely rollover contribution.

- PLR 200441032, July 15, 2004. Pursuant to Code Sec. 402(c)(3)(B), IRS waived 60-day rollover requirement due to a administrative error on the part of his financial institution. Taxpayer was granted 60 days, from date the letter was issued, to make a contribution which would otherwise be considered a timely rollover contribution.
- PLR 200440031, July 6, 2004. In determining who is the designated beneficiary of certain qualified plans, when a plan makes distributions from the plan to a trust and the trust provides the trustee with discretion to pay estate expenses to creditors, these creditors will not be treated as potential beneficiaries for purposes of Code Sec. 401(a)(9).
- PLR 200439049, July 1, 2004. Pursuant to Code Sec. 402(c)(3)(B), IRS waived 60-day rollover requirement where a bank miscalculated the taxpayer's required minimum distribution, the taxpayer failed to meet rollover requirement. Taxpayer was granted 60 days, from date the letter was issued, to make contribution which would be considered timely rollover contribution.

**J. Line of Duty Disability and Death Benefits--§ 104(a)(1)**

- PLR 200522010, June 3, 2005. Disability benefits paid to police officers are excluded from gross income pursuant to Code Sec. 104(a)(1) despite fact disability pension is computed as a fraction of disabled employee's salary prior to retirement.

**K. Procedural Rules**

- Announcement 2005-37, 2005-21 I.R.B. 1096, May 9, 2005. This announcement provides procedures and sample language for volume submitter practitioners to use in adopting an “implementing amendment” that authorizes the practitioner to amend the plan on behalf of adopting employers.
- Announcement 2005-36, 2005-21 I.R.B. 1095, May 9, 2005. This announcement provides that the GUST program for pre-approved defined contribution plans will close as of June 15, 2005.
- Announcement 2004-71, 2004-40 I.R.B. 569, September 13, 2004. In this announcement, the IRS issued a draft revenue procedure regarding the proposed six-year remedial amendment cycle for pre-approved plans, and five-year staggered remedial amendment cycles for individually designed plans, and requested public input before it finalizes the revenue procedure.
- Rev. Proc. 2005-16, 2005-10 I.R.B. 674, February 18, 2005. This revenue procedure provides the IRS’ procedures for issuing opinion and advisory letters to defined contribution pre-approved plans (master and prototype and volume submitter) with respect to EGTRRA.

- Rev. Proc. 2005-8, 2005-1 I.R.B. 243, January 3, 2005. This revenue procedure provides guidance on the amount of fees that will be charged to taxpayers requesting letter rulings, determination letters, etc., from the Commissioner, Tax Exempt and Government Entities Division.
- Rev. Proc. 2005-6, 2005-1 I.R.B. 200, January 3, 2005. This revenue procedure provides guidance on the revised procedure for obtaining determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans.
- Rev. Proc. 2005-4, 2005-1 I.R.B. 128, January 3, 2005. This revenue procedure gives guidance explaining the manner in which taxpayers, under the jurisdiction of the Tax Exempt and Government Entities Division of the IRS, may request and receive guidance from the IRS.
- Rev. Proc. 2004-44, 2004-33 I.R.B., August 2, 2004. This revenue procedure outlines the procedure by which a plan administrator or a plan sponsor may request and obtain approval for an extension of an amortization period in accordance with Code Sec. 412(e) and ERISA Sec. 304(a).

**L. Form 1099-R, Form W-2 Filings, and Form W-4's**

- Final and Temporary Regulations on Form W-4 (TD 9196, 2005-19 I.R.B. 1000), April 14, 2005, and Announcement 2005-40. The final and temporary regulations provide guidance under Code Sec. 3402(f) relating to Form W-4 that relieves employers of some requirements and makes changes to other provisions. IRS Announcement 2005-40 corrected errors in the final and temporary regulations.
- Changes to 2004 Instructions for Forms 1099-R and 5498, December 15, 2004. On its website, the IRS clarified instructions for these two forms. These changes clarify the proper entry of Distribution Code 2 on Form 1099-R. The clarifications help to avoid unnecessary inquiries by the IRS due to an entry of Distribution Code 1 without payment of the 10% tax.

**M. Taxation—Miscellaneous**

- Rev. Proc. 2005-11, 2005-2 I.R.B. 307, January 10, 2005. This revenue procedure provides a safe harbor that certain institutions of higher education, and certain affiliated organizations can use in applying the exception for services performed by a student provided under § 3121(b)(1) of the IRC.

**N. Leave Conversion Programs**

- PLR 200450010, December 10, 2004. If all elections under City's revised sick leave and vacation plans are both irrevocable and made before end of calendar year preceding calendar year in which electing employee earns right to take paid leave that is subject of election, then under doctrine of constructive receipt and Code Sec. 451, right of City employee to make election either to continue accruing sick leave or to cash out all or part of sick leave that will be earned in next year under sick leave plan will not result in taxable income for employee under cash receipts and disbursements method of accounting.

**O. Retiree Health**

- Rev. Rul. 2005-55, 2005-33 I.R.B., August 15, 2005. The IRS ruled that a non-governmental 401(a) profit-sharing plan with retiree health accounts distributable only to reimburse participant's or dependent's qualifying medical expenses does not meet the minimum vesting requirements of Code Sec. 411, and are not excludible from gross income under Code Sec. 105; The IRS indicated that the plan would not fail to satisfy Code Sec. 411 merely because it permitted retiree health accounts to be distributed under the same terms as the profit-sharing accounts, although those distributions still would not be excludable under Code Sec. 105(b).
- PLR 200521005, May 27, 2005. Income derived from state public employer retirement system's retiree health plan trust is excludible from gross income under Code Sec. 115(l), and contributions to and benefits under the plan are excludible from participants' or beneficiaries' gross income.
- Rev. Rul. 2005-24, April 18, 2005. The IRS examined different examples of health reimbursement structures that could and could not be excludible from gross income.
- PLR 200505013, February 4, 2005. Income derived from city's medical reimbursement plan trust is excludible from gross income under Code Sec. 115(l).
- IRS Notice 2004-79, I.R.B., November 18, 2004. The IRS clarified that the Working Families Tax Relief Act (WFTRA) does not affect the definition of dependent for purposes of Code Sec. 106.
- IRS Notice 2004-50, 2004-33 I.R.B.196, August 9, 2004. The IRS provides guidance on Health Savings Accounts (HSAs) in question-and-answer format.

**P. Listed Transactions**

- Final Regulations on Circular 230, (T.D. 9165), December 20, 2004. The final regulations establish best practices for tax advisers. Tax advisors who violate the final regulations may be censured, suspended, or disbarred from practicing before IRS.

## ADDENDUM I

### Department of Labor Guidance

- ERISA Advisory Opinion 2005-17A, June 28, 2005. The DOL issued an Advisory Opinion providing that participation by five employees of a state public employees pension fund does not adversely affect the fund's status as a "government plan," because "governmental plan" is not limited to plans established by the unilateral action of governmental entities.
- ERISA Advisory Opinion 2005-07A, May 3, 2005. The DOL issued an Advisory Opinion providing that participation by employees of federally qualified health centers in a state health benefit plan does not adversely affect the fund's status as a "government plan," because the participants would not make up more than a de minimis number of the plan's total participants.
- DOL Fact Sheet, "Selecting and Monitoring Pension Consultants," May 2005. The DOL and SEC published a fact sheet containing questions that plan fiduciaries can use in evaluating their pension consultants' potential conflicts of interest.
- DOL Model USERRA Notice, March 10, 2005. The DOL issued a model USERRA notice for employers to use in fulfilling USERRA notice requirements.
- DOL Final Regulations on Automatic Rollovers to IRAs of Mandatory Cash-Outs (69 F.R. 58018), September 28, 2004, and Prohibited Transaction Class Exemption for Financial Institutions Acting as Plan Administrators (CPTE 2004-16 Vol. 69, No. 187), September 28, 2004. The final regulations provide a safe harbor for plan fiduciaries handling automatic rollovers to IRAs of mandatory cash-outs from qualified plans. CPTE 2004-16 allows certain plan fiduciaries to use their own services or products in performing the automatic rollover without violating the prohibited transaction provisions. Both the final regulations and CPTE 2004-16 are effective with respect to automatic rollovers made on or after March 28, 2005.
- Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994, as Amended; Proposed Rule, 20 CFR 1002, September 20, 2004. The DOL issued proposed rules that provide guidance to employers and employees concerning their rights and obligations under USERRA.