

MEMO# 1123

April 20, 1989

IRS REVENUE RULING CONCERNING IRA ROLLOVER FROM A SECTION 403(B) ARRANGEMENT

- 1 - April 20, 1989 TO: PENSION MEMBERS NO. 23-89 RE: IRS REVENUE RULING
CONCERNING IRA ROLLOVER FROM A SECTION 403(b) ARRANGEMENT

Attached is a copy of IRS Revenue Ruling 89-50, which addresses the rollover into an IRA of a total distribution from a section 403(b)(1) annuity contract that includes amounts contributed by the employer in excess of the exclusion allowance under section 403(b)(2). Section 403(b)(8) of the Code permits the tax-free rollover of total distributions from section 403(b) arrangements to IRAs or other section 403(b) arrangements. This section, however, is subject to rules similar to those under section 402(a)(5)(B), which states that the maximum amount that can be rolled over is the amount distributed reduced by employee contributions. Employee contributions for this purpose include employer contributions includible in the gross income of the employee. The ruling holds that employee contributions to a section 403(b) arrangement include those employer contributions that are in excess of the exclusion allowance and therefore includible in the employee's gross income. Therefore, such amounts were not eligible for rollover under section 403(b)(8) of the Code, and may be subject to the six-percent tax under section 4973. The inclusion of such amounts, however, would not affect the rollover treatment of the eligible portion of the transferred amounts. We will keep you informed of further developments. Kathy D. Ireland Assistant General Counsel Attachment

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