New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Deferred Compensation Plans for Public Employees of New York State

Chapter 547 of the Laws of 1982 amends the New York State Finance Law to provide for the implementation of deferred compensation plans for public employees of New York State. Other public jurisdictions within New York State are also authorized to establish similar plans. The implementation of such plans will result in a tax benefit for federal income tax purposes only. There will be no tax benefit on the New York State personal income tax return. The new law establishes a Deferred Compensation Board, which is authorized to adopt rules and regulations regarding the standards and requirements of all deferred compensation plans and to provide a mechanism for the selection of financial organizations for investment purposes. The State Comptroller is authorized to deduct moneys through payroll deduction at the request of any public employee who participates in the plan. Public employees who are represented by an employee organization which negotiates pursuant to Article 14 of the Civil Service Law can participate in the above plan, but not until it is authorized to do so in a collectively negotiated agreement.

The deferred compensation plan must be established under the provisions of section 457 of the Internal Revenue Code. The Internal Revenue Code provides requirements and limitations for deferred compensation plans with respect to service for state and local governments. Generally, the maximum amount that can be deferred in a taxable year is the lesser of $7,500 or 33 1/3% of includible compensation. Distributions from the plan, including earnings on amounts deferred, must be included in gross income for the taxable year in which the distribution is made.

Chapter 547 of the Laws of 1982 also added sections 612(b)(26) and 612(c)(27) to the Tax Law. Section 612(b)(26), requires participants to add to their federal adjusted gross income the amount deferred under the plan during the taxable year.

Section 612(c)(27) allows participants who properly included a distribution from the plan in their federal adjusted gross income to subtract the part of the distribution that was previously included in total New York income under section 612(b) (26).

Section 612(b)(26) and 612(c)(27) adjustments apply only to plans established pursuant to section 5 of the New York State Finance Law. These modifications do not apply to any other deferred compensation arrangements, such as a teacher's tax deferred annuity established pursuant to section 403(b) of the Internal Revenue Code.

Title T of the Administrative Code of the City of New York has been correspondingly amended by adding section T46-112.0(b)(27) and T46-112.0(c)(26).