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February 13, 2012

Chairman Greg Brilliant
Davie Police Pension Plan
C/O Precision Pension Administration, Inc.
13790 NW 4 Street, Suite 105
Sunrise, Florida 33325

Re: Davie Police Pension
Rollovers from IRC §457(b) plan
Our File No. 900337

Dear Chairman Brilliant:

This letter is in response to your request for a legal opinion regarding the ability of the Plan to accept rollovers from a 457 plan (or otherwise) to purchase permissive service or prior service credit. As described below, rollovers into the Davie Police Pension Plan to purchase prior service, military service or permissive service credit are not taxable events.

Generally, an eligible IRC §457(b) plan may only make a distribution to a plan participant after the plan participant has reached the age of 70 ½, has had a separation from service with his employer, or in the event of an unforeseeable emergency. See Treas. Reg. §1.457-6. However, there is an exception to this general rule for trustee-to-trustee transfers between governmental plans for the purpose of purchasing permissible service credit. The Treasury Regulations specify that a transfer from an eligible IRC §457(b) plan for the purpose of purchasing permissive service credit under a recipient governmental defined benefit pension plan (as defined in IRC §414(d) is not treated as a "distribution" for IRC §457 purposes. See Treas. Reg. §1.457-10(b)(8)(ii)(A). As such, a transfer from a participant's eligible IRC §457(b) account may be done regardless of the participant's age or whether the participant has separated from service, and no amount will be included in the participant's gross income by reason of the transfer, provided the transfer is made for the purchase

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February 13, 2012

Page 2

of permissive service credit in a qualified governmental defined benefit plan.

As the guidance cited above makes clear, a transfer to the Plan from a participant's eligible IRC §457(b) account may be done regardless of the participant's age or whether the participant has separated from service, provided the transfer is made for the purchase of permissive service credit under the Plan. *See* 26 CFR §1.457-10(8)(b).

Feel free to call with any questions.

Sincerely,



ADAM P. LEVINSON

APL:pc
encl

cc: Bob Dorn, Administrator

Standard Federal Tax Reporter (2012), Regulation, §1.457-10., Internal Revenue Service, Miscellaneous provisions

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(a) *Plan terminations and frozen plans*

(1) **In general.**— An eligible employer may amend its plan to eliminate future deferrals for existing participants or to limit participation to existing participants and employees. An eligible plan may also contain provisions that permit plan termination and permit amounts deferred to be distributed on termination. In order for a plan to be considered terminated, amounts deferred under an eligible plan must be distributed to all plan participants and beneficiaries as soon as administratively practicable after termination of the eligible plan. The mere provision for, and making of, distributions to participants or beneficiaries upon a plan termination will not cause an eligible plan to cease to satisfy the requirements of section 457(b) or the regulations.

(2) *Employers that cease to be eligible employers*

(i) **Plan not terminated.**— An eligible employer that ceases to be an eligible employer may no longer maintain an eligible plan. If the employer was a tax-exempt entity and the plan is not terminated as permitted under paragraph (a)(2)(ii) of this section, the tax consequences to participants and beneficiaries in the previously eligible (unfunded) plan of an ineligible employer are determined in accordance with either section 451 if the employer becomes an entity other than a State or § 1.457-11 if the employer becomes a State. If the employer was a State and the plan is neither terminated as permitted under paragraph (a)(2)(ii) of this section nor transferred to another eligible plan of that State as permitted under paragraph (b) of this section, the tax consequences to participants in the previously eligible governmental plan of an ineligible employer, the assets of which are held in trust pursuant to § 1.457-8(a), are determined in accordance with section 402(b) (section 403(c) in the case of an annuity contract) and the trust is no longer to be treated as a trust that is exempt from tax under section 501(a).

(ii) **Plan termination.**— As an alternative to determining the tax consequences to the plan and participants under paragraph (a)(2)(i) of this section, the employer may terminate the plan and distribute the amounts deferred (and all plan assets) to all plan participants as soon as administratively practicable in accordance with paragraph (a)(1) of this section. Such distribution may include eligible rollover distributions in the case of a plan that was an eligible governmental plan. In addition, if the employer is a State, another alternative to determining the tax consequences under paragraph (a)(2)(i) of this section is to transfer the assets of the eligible governmental plan to an eligible governmental plan of another eligible employer within the same State under the plan-to-plan transfer rules of paragraph (b) of this section.

(3) **Examples.**— The provisions of this paragraph (a) are illustrated by the following examples:

Example 1. (i) **Facts.** Employer Y, a corporation that owns a State hospital, sponsors an eligible governmental plan funded through a trust. Employer Y is acquired by a for-profit hospital and Employer Y ceases to be an eligible employer under section 457(e)(1) or § 1.457-2(e). Employer Y terminates the plan and, during the next 6 months, distributes to participants and beneficiaries all amounts deferred that were under the plan.

(ii) **Conclusion.** The termination and distribution does not cause the plan to fail to be an eligible governmental plan. Amounts that are distributed as eligible rollover distributions may be rolled over to an eligible retirement plan described in section 402(c)(8)(B).

Example 2. (i) **Facts.** The facts are the same as in *Example 1*, except that Employer Y decides to continue to maintain the plan.

(ii) **Conclusion.** If Employer Y continues to maintain the plan, the tax consequences to participants and beneficiaries will be determined in accordance with either section 402(b) if the compensation deferred is funded through a trust, section 403(c) if the compensation deferred is funded through

annuity contracts, or § 1.457-11 if the compensation deferred is not funded through a trust or annuity contract. In addition, if Employer Y continues to maintain the plan, the trust will no longer be treated as exempt from tax under section 501(a).

Example 3. (i) *Facts.* Employer Z, a corporation that owns a tax-exempt hospital, sponsors an unfunded eligible plan. Employer Z is acquired by a for-profit hospital and is no longer an eligible employer under section 457(e)(1) or § 1.457-2(e). Employer Z terminates the plan and distributes all amounts deferred under the eligible plan to participants and beneficiaries within a one-year period.

(ii) *Conclusion.* Distributions under the plan are treated as made under an eligible plan of a tax-exempt entity and the distributions of the amounts deferred are includible in the gross income of the participant or beneficiary in the year distributed.

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that Employer Z decides to maintain instead of terminate the plan.

(ii) *Conclusion.* If Employer Z maintains the plan, the tax consequences to participants and beneficiaries in the plan will thereafter be determined in accordance with section 451.

(b) Plan-to-plan transfers

(1) **General rule.** — An eligible governmental plan may provide for the transfer of amounts deferred by a participant or beneficiary to another eligible governmental plan if the conditions in paragraphs (b) (2), (3), or (4) of this section are met. An eligible plan of a tax-exempt entity may provide for transfers of amounts deferred by a participant to another eligible plan of a tax-exempt entity if the conditions in paragraph (b)(5) of this section are met. In addition, an eligible governmental plan may accept transfers from another eligible governmental plan as described in the first sentence of this paragraph (b)(1), and an eligible plan of a tax-exempt entity may accept transfers from another eligible plan of a tax-exempt entity as described in the preceding sentence. However, a State may not transfer the assets of its eligible governmental plan to a tax-exempt entity's eligible plan and the plan of a tax-exempt entity may not accept such a transfer. Similarly, a tax-exempt entity may not transfer the assets of its eligible plan to an eligible governmental plan and an eligible governmental plan may not accept such a transfer. In addition, if the conditions in paragraph (b)(4) of this section (relating to permissive past service credit and repayments under section 415) are met, an eligible governmental plan of a State may provide for the transfer of amounts deferred by a participant or beneficiary to a qualified plan (under section 401(a)) maintained by a State. However, a qualified plan may not transfer assets to an eligible governmental plan or to an eligible plan of a tax-exempt entity, and an eligible governmental plan or the plan of a tax-exempt entity may not accept such a transfer.

(2) **Requirements for post-severance plan-to-plan transfers among eligible governmental plans.** — A transfer under paragraph (b)(1) of this section from an eligible governmental plan to another eligible governmental plan is permitted if the following conditions are met —

- (i) The transferor plan provides for transfers;
- (ii) The receiving plan provides for the receipt of transfers;
- (iii) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and
- (iv) In the case of a transfer for a participant, the participant has had a severance from employment with the transferring employer and is performing services for the entity maintaining the receiving plan.

(3) **Requirements for plan-to-plan transfers of all plan assets of eligible governmental plan.** — A transfer under paragraph (b)(1) of this section from an eligible governmental plan to another eligible governmental plan is permitted if the following conditions are met —

- (i) The transfer is from an eligible governmental plan to another eligible governmental plan within the same State;
- (ii) All of the assets held by the transferor plan are transferred;
- (iii) The transferor plan provides for transfers;
- (iv) The receiving plan provides for the receipt of transfers;
- (v) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and
- (vi) The participants or beneficiaries whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they are performing services for the entity maintaining the receiving plan.

(4) Requirements for plan-to-plan transfers among eligible governmental plans of the same employer .— A transfer under paragraph (b)(1) of this section from an eligible governmental plan to another eligible governmental plan is permitted if the following conditions are met —

- (i) The transfer is from an eligible governmental plan to another eligible governmental plan of the same employer (and, for this purpose, the employer is not treated as the same employer if the participant's compensation is paid by a different entity);
- (ii) The transferor plan provides for transfers;
- (iii) The receiving plan provides for the receipt of transfers;
- (iv) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and
- (v) The participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the participant or beneficiary is performing services for the entity maintaining the receiving plan.

(5) Requirements for post-severance plan-to-plan transfers among eligible plans of tax-exempt entities .— A transfer under paragraph (b)(1) of this section from an eligible plan of a tax-exempt employer to another eligible plan of a tax-exempt employer is permitted if the following conditions are met —

- (i) The transferor plan provides for transfers;
- (ii) The receiving plan provides for the receipt of transfers;
- (iii) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and
- (iv) In the case of a transfer for a participant, the participant has had a severance from employment with the transferring employer and is performing services for the entity maintaining the receiving plan.

(6) Treatment of amount transferred following a plan-to-plan transfer between eligible plans .— Following a transfer of any amount between eligible plans under paragraphs (b)(1) through (b)(5) of this section —

(i) the transferred amount is subject to the restrictions of § 1.457-6 (relating to when distributions are permitted to be made to a participant under an eligible plan) in the receiving plan in the same manner as if the transferred amount had been originally been deferred under the receiving plan if the participant is performing services for the entity maintaining the receiving plan, and

(ii) in the case of a transfer between eligible plans of tax-exempt entities, except as otherwise determined by the Commissioner, the transferred amount is subject to § 1.457-7(c)(2) (relating to when amounts are considered to be made available under an eligible plan of a tax-exempt entity) in the same manner as if the elections made by the participant or beneficiary under the transferor plan had been made under the receiving plan.

(7) Examples .— The provisions of paragraphs (b)(1) through (6) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Participant A, the president of City X's hospital, has accepted a position with another hospital which is a tax-exempt entity. A participates in the eligible governmental plan of City X. A would like to transfer the amounts deferred under City X's eligible governmental plan to the eligible plan of the tax-exempt hospital.

(ii) *Conclusion.* City X's plan may not transfer A's amounts deferred to the tax-exempt employer's eligible plan. In addition, because the amounts deferred would no longer be held in trust for the exclusive benefit of participants and their beneficiaries, the transfer would violate the exclusive benefit rule of section 457(g) and § 1.457-8(a).

Example 2. (i) *Facts.* County M, located in State S, operates several health clinics and maintains an eligible governmental plan for employees of those clinics. One of the clinics operated by County M is being acquired by a hospital operated by State S, and employees of that clinic will become employees of State S. County M permits those employees to transfer their balances under County M's eligible governmental plan to the eligible governmental plan of State S.

(ii) *Conclusion.* If the eligible governmental plans of County M and State S provide for the transfer and acceptance of the transfer (and the other requirements of paragraph (b)(1) of this section are satisfied), then the requirements of paragraph (b)(2) of this section are satisfied and, thus, the transfer will not cause either plan to violate the requirements of section 457 or these regulations.

Example 3. (i) *Facts.* City Employer Z, a hospital, sponsors an eligible governmental plan. City Employer Z is located in State B. All of the assets of City Employer Z are being acquired by a tax-exempt hospital. City Employer Z, in accordance with the plan-to-plan transfer rules of paragraph (b) of this section, would like to transfer the total amount of assets deferred under City Employer Z's eligible governmental plan to the acquiring tax-exempt entity's eligible plan.

(ii) *Conclusion.* City Employer Z may not permit participants to transfer the amounts to the eligible plan of the tax-exempt entity. In addition, because the amounts deferred would no longer be held in trust for the exclusive benefit of participants and their beneficiaries, the transfer would violate the exclusive benefit rule of section 457(g) and § 1.457-8(a).

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that City Employer Z, instead of transferring all of its assets to the eligible plan of the tax-exempt entity, decides to transfer all of the amounts deferred under City Z's eligible governmental plan to the eligible governmental plan of County B in which City Z is located. County B's eligible plan does not cover employees of City Z, but is willing to allow the assets of City Z's plan to be transferred to County B's plan, a related state government entity, also located in State B.

(ii) *Conclusion.* If City Employer Z's (transferor) eligible governmental plan provides for such transfer and the eligible governmental plan of County B permits the acceptance of such a transfer (and the other requirements of paragraph (b)(1) of this section are satisfied), then the requirements of paragraph (b)(3) of this section are satisfied and, thus, City Employer Z may transfer the total amounts deferred under its eligible governmental plan, prior to termination of that plan, to the eligible governmental plan maintained by County B. However, the participants of City Employer Z whose

deferred amounts are being transferred are not eligible to participate in the eligible governmental plan of County B, the receiving plan, unless they are performing services for County B.

Example 5. (i) *Facts.* State C has an eligible governmental plan. Employees of City U in State C are among the eligible employees for State C's plan and City U decides to adopt another eligible governmental plan only for its employees. State C decides to allow employees to elect to transfer all of the amounts deferred for an employee under State C's eligible governmental plan to City U's eligible governmental plan.

(ii) *Conclusion.* If State C's (transferor) eligible governmental plan provides for such transfer and the eligible governmental plan of City U permits the acceptance of such a transfer (and the other requirements of paragraph (b)(1) of this section are satisfied), then the requirements of paragraph (b)(4) of this section are satisfied and, thus, State C may transfer the total amounts deferred under its eligible governmental plan to the eligible governmental plan maintained by City U.

(8) Purchase of permissive service credit by plan-to-plan transfers from an eligible governmental plan to a qualified plan

(i) **General rule.** — An eligible governmental plan of a State may provide for the transfer of amounts deferred by a participant or beneficiary to a defined benefit governmental plan (as defined in section 414(d)), and no amount shall be includible in gross income by reason of the transfer, if the conditions in paragraph (b)(8)(ii) of this section are met. A transfer under this paragraph (b)(8) is not treated as a distribution for purposes of § 1.457-6. Therefore, such a transfer may be made before severance from employment.

(ii) **Conditions for plan-to-plan transfers from an eligible governmental plan to a qualified plan.** — A transfer may be made under this paragraph (b)(8) only if the transfer is either—

(A) For the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under the receiving defined benefit governmental plan; or

(B) A repayment to which section 415 does not apply by reason of section 415(k)(3).

(iii) **Example.** — The provisions of this paragraph (b)(8) are illustrated by the following example:

Example. (i) *Facts.* Plan X is an eligible governmental plan maintained by County Y for its employees. Plan X provides for distributions only in the event of death, an unforeseeable emergency, or severance from employment with County Y (including retirement from County Y). Plan S is a qualified defined benefit plan maintained by State T for its employees. County Y is within State T. Employee A is an employee of County Y and is a participant in Plan X. Employee A previously was an employee of State T and is still entitled to benefits under Plan S. Plan S includes provisions allowing participants in certain plans, including Plan X, to transfer assets to Plan S for the purchase of service credit under Plan S and does not permit the amount transferred to exceed the amount necessary to fund the benefit resulting from the service credit. Although not required to do so, Plan X allows Employee A to transfer assets to Plan S to provide a service benefit under Plan S.

(ii) *Conclusion.* The transfer is permitted under this paragraph (b)(8).

(c) Qualified domestic relations orders under eligible plans

(1) **General rule.** — An eligible plan does not become an ineligible plan described in section 457(f) solely because its administrator or sponsor complies with a qualified domestic relations order as defined in section 414(p), including an order requiring the distribution of the benefits of a participant to an alternate payee in advance of the general rules for eligible plan distributions under § 1.457-6. If a distribution or payment is made from an eligible plan to an alternate payee pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to the distribution or payment.

(2) **Examples.** — The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant C and C's spouse D are divorcing. C is employed by State S and is a participant in an eligible plan maintained by State S. C has an account valued at \$100,000 under the plan. Pursuant to the divorce, a court issues a qualified domestic relations order on September 1, 2003 that allocates 50 percent of C's \$100,000 plan account to D and specifically provides for an immediate distribution to D of D's share within 6 months of the order. Payment is made to D in January of 2004.

(ii) *Conclusion.* State S's eligible plan does not become an ineligible plan described in section 457(f) and § 1.457-11 solely because its administrator or sponsor complies with the qualified domestic relations order requiring the immediate distribution to D in advance of the general rules for eligible plan distributions under § 1.457-6. In accordance with section 402(e)(1)(A), D (not C) must include the distribution in gross income. The distribution is includible in D's gross income in 2004. If the qualified domestic relations order were to provide for distribution to D at a future date, amounts deferred attributable to D's share will be includible in D's gross income when paid to D.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that S is a tax-exempt entity, instead of a State.

(ii) *Conclusion.* State S's eligible plan does not become an ineligible plan described in section 457(f) and § 1.457-11 solely because its administrator or sponsor complies with the qualified domestic relations order requiring the immediate distribution to D in advance of the general rules for eligible plan distributions under § 1.457-6. In accordance with section 402(e)(1)(A), D (not C) must include the distribution in gross income. The distribution is includible in D's gross income in 2004, assuming that the plan did not make the distribution available to D in 2003. If the qualified domestic relations order were to provide for distribution to D at a future date, amounts deferred attributable to D's share would be includible in D's gross income when paid or made available to D.

(d) Death benefits and life insurance proceeds. — A death benefit plan under section 457(e)(11) is not an eligible plan. In addition, no amount paid or made available under an eligible plan as death benefits or life insurance proceeds is excludable from gross income under section 101.

(e) Rollovers to eligible governmental plans

(1) General rule. — An eligible governmental plan may accept contributions that are eligible rollover distributions (as defined in section 402(c)(4)) made from another eligible retirement plan (as defined in section 402(c)(8)(B)) if the conditions in paragraph (e)(2) of this section are met. Amounts contributed to an eligible governmental plan as eligible rollover distributions are not taken into account for purposes of the annual limit on annual deferrals by a participant in § 1.457-4(c) or § 1.457-5, but are otherwise treated in the same manner as amounts deferred under section 457 for purposes of §§ 1.457-3 through 1.457-9 and this section.

(2) Conditions for rollovers to an eligible governmental plan. — An eligible governmental plan that permits eligible rollover distributions made from another eligible retirement plan to be paid into the eligible governmental plan is required under this paragraph (e)(2) to provide that it will separately account for any eligible rollover distributions it receives. A plan does not fail to satisfy this requirement if it separately accounts for particular types of eligible rollover distributions (for example, if it maintains a separate account for eligible rollover distributions attributable to annual deferrals that were made under other eligible governmental plans and a separate account for amounts attributable to other eligible rollover distributions), but this requirement is not satisfied if any such separate account includes any amount that is not attributable to an eligible rollover distribution.

(3) Example. — The provisions of this paragraph (e) are illustrated by the following example:

Example. (i) *Facts.* Plan T is an eligible governmental plan that provides that employees who are eligible to participate in Plan T may make rollover contributions to Plan T from amounts distributed to an employee from an eligible retirement plan. An eligible retirement plan is defined in Plan T as another eligible governmental plan, a qualified section 401(a) or 403(a) plan, or a section 403(b) contract, or an individual retirement arrangement (IRA) that holds such amounts. Plan T requires rollover contributions to be paid by the eligible retirement plan directly to Plan T (a direct rollover) or to

be paid by the participant within 60 days after the date on which the participant received the amount from the other eligible retirement plan. Plan T does not take rollover contributions into account for purposes of the plan's limits on amounts deferred that conform to § 1.457-4(c). Rollover contributions paid to Plan T are invested in the trust in the same manner as amounts deferred under Plan T and rollover contributions (and earnings thereon) are available for distribution to the participant at the same time and in the same manner as amounts deferred under Plan T. In addition, Plan T provides that, for each participant who makes a rollover contribution to Plan T, the Plan T record-keeper is to establish a separate account for the participant's rollover contributions. The record-keeper calculates earnings and losses for investments held in the rollover account separately from earnings and losses on other amounts held under the plan and calculates disbursements from and payments made to the rollover account separately from disbursements from and payments made to other amounts held under the plan.

(ii) *Conclusion.* Plan T does not lose its status as an eligible governmental plan as a result of the receipt of rollover contributions. The conclusion would not be different if the Plan T record-keeper were to establish two separate accounts, one of which is for the participant's rollover contributions attributable to annual deferrals that were made under an eligible governmental plan and the other of which is for other rollover contributions.

(f) **Deemed IRAs under eligible governmental plans** .— See regulations under section 408(q) for guidance regarding the treatment of separate accounts or annuities as individual retirement plans (IRAs). [Reg. §1.457-10.]

.01 **Historical Comment:** Proposed 5/8/2002. Adopted 7/10/03 by T.D. 9075 (corrected 8/26/2003). Amended 4/4/2007 by T.D. 9319.