

variations or options under the plan as described in section 457(e)(12), but only to the extent the compensation is attributable to services performed as an independent contractor;

(2) An agreement or arrangement described in §1.457-11(b);

(3) Any plan satisfying the conditions in section 1107(c)(4) of the Tax Reform Act of 1986 (100 Stat. 2494) (TRA '86) (relating to certain plans for State judges); and

(4) Any of the following plans or arrangements (to which specific transitional statutory exclusions apply)—

(i) A plan or arrangement of a tax-exempt entity in existence prior to January 1, 1987, if the conditions of section 1107(c)(3)(B) of the TRA '86, as amended by section 1011(e)(6) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3700) (TAMRA), are satisfied (see §1.457-2(b)(4) for a special rule regarding such plan);

(ii) A collectively bargained nonelective deferred compensation plan in effect on December 31, 1987, if the conditions of section 6064(d)(2) of TAMRA are satisfied;

(iii) Amounts described in section 6064(d)(3) of TAMRA (relating to certain nonelective deferred compensation arrangements in effect before 1989); and

(iv) Any plan satisfying the conditions in section 1107(c)(4) or (5) of TRA '86 (relating to certain plans for certain individuals with respect to which the Service issued guidance before 1977).

(l) *State.* *State* means a State (treating the District of Columbia as a State as provided under section 7701(a)(10)), a political subdivision of a State, and any agency or instrumentality of a State.

(m) *Tax-exempt entity.* *Tax-exempt entity* includes any organization exempt from tax under subtitle A of the Internal Revenue Code, except that a governmental unit (including an international governmental organization) is not a tax-exempt entity.

(n) *Trust.* *Trust* means a trust described under section 457(g) and §1.457-8. Custodial accounts and contracts described in section 401(f) are treated as trusts under the rules described in §1.457-8(a)(2).

[T.D. 9075, 68 FR 41234, July 11, 2003; 68 FR 51446, Aug. 27, 2003]

§ 1.457-3 General introduction to eligible plans.

(a) *Compliance in form and operation.* An eligible plan is a written plan established and maintained by an eligible employer that is maintained, in both form and operation, in accordance with the requirements of §§1.457-4 through 1.457-10. An eligible plan must contain all the material terms and conditions for benefits under the plan. An eligible plan may contain certain optional features not required for plan eligibility under section 457(b), such as distributions for unforeseeable emergencies, loans, plan-to-plan transfers, additional deferral elections, acceptance of rollovers to the plan, and distributions of smaller accounts to eligible participants. However, except as otherwise specifically provided in §§1.457-4 through 1.457-10, if an eligible plan contains any optional provisions, the optional provisions must meet, in both form and operation, the relevant requirements under section 457 and §§1.457-2 through 1.457-10.

(b) *Treatment as single plan.* In any case in which multiple plans are used to avoid or evade the requirements of §§1.457-4 through 1.457-10, the Commissioner may apply the rules under §§1.457-4 through 1.457-10 as if the plans were a single plan. See also §1.457-4(c)(3)(v) (requiring an eligible employer to have no more than one normal retirement age for each participant under all of the eligible plans it sponsors), the second sentence of §1.457-4(e)(2) (treating deferrals under all eligible plans under which an individual participates by virtue of his or her relationship with a single employer as a single plan for purposes of determining excess deferrals), and §1.457-5 (combining annual deferrals under all eligible plans).

[T.D. 9075, 68 FR 41234, July 11, 2003]

§ 1.457-4 Annual deferrals, deferral limitations, and deferral agreements under eligible plans.

(a) *Taxation of annual deferrals.* Annual deferrals that satisfy the requirements of paragraphs (b) and (c) of this section are excluded from the gross income of a participant in the year deferred or contributed and are not includible in gross income until paid to