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Letter Ruling 79-48: Tax-Sheltered Annuities under IRC s. 403(b)

November 15, 1979

This is in reply to your letter of August 30, 1979 requesting a ruling with respect to the Massachusetts income tax treatment of annuities described in Section 403(b) of the Internal Revenue Code.

Section 403(b) excludes from the federal gross income of employees of public school systems and organizations exempt from tax under Section 501(c)(3) of the Code, contributions by the employers toward the purchase of tax sheltered employee annuity contracts.

Massachusetts gross income is federal gross income with certain modifications. (General Laws Chapter 62, Section 2). Unless specifically stated in Chapter 62, an item of income which is not included in federal gross income for a taxable year is not included in Massachusetts gross income.

Chapter 62, Section 2(a)(1)(D) adds to federal gross income annuity contributions for employees of organizations described in Section 403(b) of the Code to the extent that these contributions were made pursuant to a salary reduction agreement and were not required under a retirement program of the employer. Section 2(a)(2)(F) of Chapter 62 deducts from federal gross income, income from annuity, stock bonus, pension, profit sharing, annuity or deferred payment plans or contracts described in Section 403(b) of the Code until the aggregate amount deducted equals the aggregate amount previously added back.

Based on the foregoing it is ruled that:

1. Contributions by an employer to a tax sheltered annuity contract described in Section 403(b) of the Internal Revenue Code are included in the employee's Massachusetts gross income and are taxable to him in the year the contributions are made.

2. Earnings on an employee's tax sheltered annuity contract are not included in the employee's federal gross income at the time the earnings accrue and therefore are not taxable income to the employee at the time of accrual.

3. Payments to an employee from a tax sheltered annuity plan, whether made before or after an employee retires, are deducted from the employee's Massachusetts gross income in the year the

payments are received until the aggregate amount deducted equals the aggregate amount previously subjected to Massachusetts personal income tax; payments to the employee in excess of the contributions are taxable to such employee.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

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