

## INTERNAL REVENUE SERVICE

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October 17, 2000

Entity E =

Dear

This responds to the letter of June 7, 2000 and subsequent correspondence, on behalf of Entity E, requesting a ruling concerning the proposed amended and revised deferred compensation plan (the "Plan"), including a supplement providing special provisions regarding temporary, seasonal and part-time employees, which E intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986, as amended under sections 1447 and 1448 of the Small Business Job Protection Act of 1996. E is represented to be a state governmental entity described in section 457(e)(1)(A) of the Code.

Under the Plan an employee may elect to defer compensation that would have been received for services rendered to E in any taxable year until death, separation from service with E, attainment of age 70½, or until the occurrence of an unforeseeable emergency. The Plan also includes a provision generally permitting a participant to elect an in-service distribution of \$5,000.00 or less to be paid to a participant from his or her account in certain limited circumstances set forth thereunder and in section 457(e)(9) (A). The Plan's supplement concerning temporary, seasonal and part-time employees provides an automatic cash-out distribution of \$5,000.00 or less to be paid to a participant from his or her account in certain limited circumstances set forth thereunder. No loans may be made from assets held by the Plan to any participant or beneficiary under the Plan.

The participant's election under the Plan to defer compensation not yet received must be filed prior to the beginning of the month in which his or her salary reduction agreement becomes effective. The Plan provides for a maximum amount that may be deferred by a participant in any taxable year and also provides for a catch-up computation for amounts deferred for one or more of the participant's last three taxable years ending before he attains normal retirement age under the plan. The amounts that may be deferred under the annual maximum limitation and the catch-up provision are within the limitations of section 457 including the section 457(c) coordinated deferral provision.

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With certain limitations, a participant may elect the manner in which his deferred amounts will be distributed. The election generally must be made prior to the date any such payment must commence to the participant. If the participant fails to make a timely election, distribution will commence at the time and in the manner set forth in the Plan. The Plan also includes a provision permitting a one-time additional election by a participant to further defer commencement of his distributions under the Plan after the first permissible payout date if distribution from his account had not already commenced. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 401(a)(9) and 457(d)(2) of the Code.

The Plan provides that amounts of compensation deferred thereunder are to be transferred to and invested into a trust for the exclusive benefit of the participants and their beneficiaries. Also, all amounts deferred under the Plan must be transferred to a trust represented to meet the section 457(g) trust requirement within an administratively reasonable time period, but no later than 15 days after the end of the month in which the amounts were deferred. The rights of any participant or beneficiary to payments pursuant to the Plan are nonassignable and not subject to assignment, transfer or alienation.

The Plan provides that distribution to a former spouse or alternate payee pursuant to a domestic relations order may occur or commence only when authorized under section 457(d)(1)(A) governing when distributions under the Plan may begin, that is, when the participant attains age 70½, when the participant is separated from service with the employer, or when the alternate payee is faced with an unforeseeable emergency. If such alternate payee receives rights to amounts in a participant's account under a domestic relations order, the Plan may establish and maintain a separate account for that alternate payee.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan as defined in section 457(b).

Section 457(a) of the Code provides that in the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or beneficiary.

Section 457(b)(5) prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d).

Section 457(d)(1)(A) provides that for a section 457 plan to be an eligible plan, the plan must have distribution requirements providing that under the plan amounts will not be made available to participants or beneficiaries earlier than i) the calendar year in which the participant attains age 70 ½, ii) when the participant is separated from service

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with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations.

Section 457(f) provides that if a section 457 plan is or becomes an ineligible plan then the deferred compensation shall be included in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and the tax treatment of any amount made available under such plan to a participant or beneficiary shall be determined under section 72 relating to annuities.

Section 457(g)(1) provides that a plan maintained by an eligible governmental employer shall not be treated as an eligible deferred compensation plan unless all assets and rights purchased with such deferred compensation amounts and all income attributable to such amounts, property, or rights of the plan are held in trust for the exclusive benefit of participants and their beneficiaries.

Section 457(g)(2) provides that a trust described in section 457(g)(1) shall be treated as an organization exempt from tax under section 501(a). Section 457(g)(2)(B) provides that the amounts in the trust are treated as includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in section 457.

Based upon the provisions of the Plan summarized above, and the documents presented, we conclude as follows:

1. The amended and revised Deferred Compensation Plan established by Entity E is an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986 as amended under sections 1447 and 1448 of the Small Business Job Protection Act of 1996.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible in the recipient's gross income for the taxable year or years in which amounts are paid or otherwise made available to a participant or beneficiary in accordance with the terms of the Plan.
3. The trust associated with E's section 457(b) Plan is treated under section 457(g) as an organization exempt from taxation under section 501(a).

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than E's amended and revised Plan described above. In addition, this ruling applies only to deferrals made after the date this ruling is issued. This ruling is directed only to Entity E and applies only to the amended Plan submitted on June 7, 2000 as revised by the amendments submitted on October 4, 2000, and to the trust document submitted on June 7, 2000. If either the Plan or trust document is significantly modified, this ruling will not necessarily

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remain applicable. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, 46. However, when the criteria in section 12.05 of Rev. Proc. 2000-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely yours,  
ROBERT D. PATCHELL  
Acting Chief, Qualified Plans Branch 2  
Office of the Associate Chief Counsel  
(Tax Exempt and Government Entities)

Enclosure:

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