

**Internal Revenue Service**

**Department of the Treasury**

Number: **200303058**  
Release Date: 1/17/03  
Index No. 457.01-00 457.05-01  
457.12-02

CC:TEGE:QP2 - PLR-121804-02

Legend

October 18, 2002

City C =

Dear :

This responds to your letter of April 15, 2002 and subsequent correspondence, on behalf of City C, requesting a ruling concerning the proposed amended and restated deferred compensation plan (the "Plan") which C intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986, as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). C is represented to be a political subdivision of a state 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 C in any taxable year until death, severance from employment with C, attainment of age 70½, or until the occurrence of an unforeseeable emergency. The Plan also includes a provision providing an automatic 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 does not provide that a loan may be made from assets held by the Plan to any participant or beneficiary under the Plan.

The participant's election to defer compensation not yet earned under the Plan 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. In addition, the Plan also provides for the age 50 plus catch-up contributions described in section 414(v). However, the Plan provides that a participant can only utilize one of these two catch-up contribution provisions during a single year. The amounts that may be

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deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457 including the section 457(c) coordinated deferral provision.

With certain limitations, a participant may elect the manner in which his deferred amounts will be distributed. If the participant fails to make a timely election by the required minimum distribution date, distribution will commence at the time and in the manner set forth in the Plan. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 401(a)(9) and 457(d) of the Code.

The Plan provides that amounts of compensation deferred thereunder are to be transferred to and invested in a trust described in section 457(g)(1) and/or in an annuity contract described in section 457(g)(3) for the exclusive benefit of the participants and their beneficiaries. All amounts deferred under the Plan must be transferred to the trust and/or annuity contract within an administratively reasonable time period. The annuity contract is represented to meet the requirements of section 401(f) and thus will be treated as a trust pursuant to section 457(g)(3). The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and not subject to pledge, transfer or encumbrance.

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)(1)(A) of the Code provides that in the case of a participant in an eligible governmental 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 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 has a severance from employment with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations.

Section 457(g) 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

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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)(A) 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)(3) states that custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f).

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

1. The amended and restated Deferred Compensation Plan established by City C is an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986 as amended under the EGTRRA.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(A) in the recipient's gross income for the taxable year or years in which amounts are paid to a participant or beneficiary in accordance with the terms of the Plan.
3. The annuity contract and the trust associated with C's section 457(b) Plan are each treated under section 457(g) as a trust which is treated 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 C's amended and restated Plan described above. In addition, this ruling applies only to deferrals made after the date this ruling was issued. If the Plan is significantly modified, this ruling will not necessarily remain applicable. This ruling is directed only to City C and applies only to the amended and restated Plan submitted on April 15, 2002 as revised by the September 9, amendments and to the annuity contract submitted on May 17, 2002, as revised by the amendments submitted on September 9, 2002. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

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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. 2002-1, 2002-1 I.R.B. 1, 50. However, when the criteria in section 12.05 of Rev. Proc. 2002-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely yours,

ROBERT D. PATCHELL  
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Office of the Associate Chief Counsel  
(Tax Exempt and Government Entities)

Enclosure: