

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EB:QP:2 - PLR-127194-02

Date:

February 21, 2003

Legend:

State X =  
Plan =

EIN =  
Date Y =  
Trust =

Year Z =

Dear :

This letter is in response to your request of May 6, 2002, and subsequent correspondence on behalf of the Plan requesting a ruling that the Plan is an eligible deferred compensation plan within the meaning of section 457 of the Internal Revenue Code of 1986.

State X maintains the Plan for the exclusive benefit of eligible employees. In Year Z, X's General Assembly established a trust for all assets of the Plan and designated the Deferred Compensation Committee as the trustees of the Trust. The authority to conduct the general investment operation of the Plan is vested in the Deferred Compensation Committee pursuant to X's Code as Trustees of the Plan and the authority to conduct the general administration of the Plan is vested in the auditor of X or such other agency or department appointed pursuant to X's Code. The Plan is established as an eligible deferred compensation plan under section 457 of the Internal Revenue Code.

X offers its employees the opportunity to participate in the Plan. In addition, any political subdivision of X may become a participating employer and make the Plan available to its employees if it passes a resolution or ordinance that formally adopts the Plan for its employees and, if joining after Date Y, approves an Adoption Agreement.

An employee is any individual who performs services for X or its participating political subdivisions for compensation on a regular basis, specifically including any

salaried employee or elected or appointed official. Employees who are not covered by the regular retirement plan of an employer will not be considered employees unless otherwise specifically provided for by the Adoption Agreement of that employer.

Under the Plan, a participant may elect, prior to the beginning of the month in which his or her salary reduction agreement becomes effective, to defer compensation for services rendered to the participating employer until separation from service, death, disability or until the occurrence of an unforeseeable emergency. Each employee may become a participant in the Plan following execution of a participation agreement which establishes the amount of deferral. 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 contribution for amounts deferred for one or more of the participant's last three taxable years ending before the participant attains normal retirement age under the Plan. The Plan also includes the age 50 catch-up provisions added by the Economic Growth and Tax Relief Reconciliation Act of 2001.

A participant or his beneficiary may elect the manner in which his deferred amounts will be distributed. The election must be made at least thirty days before the commencement of benefits. Subject to restrictions established by the administrator, the Plan shall permit payout options in the form of lump sums, periodic payments of a fixed amount or fixed duration or life contingent annuities. Absent such an election, the Account will be paid in a lump sum. The manner and time of benefit payout must meet the distribution requirements of sections 457(d) and 401(a)(9).

A participant who is entitled to a distribution and accepts employment with an employer described in section 457(e)(1)(A) that maintains an eligible 457 plan may elect to transfer his or her compensation deferred under the Plan to that other plan if the other plan provides for the acceptance of such transfers. The Plan can accept a transfer of compensation previously deferred under another plan of deferred compensation maintained by another employer described in section 457(e)(1)(A) as an eligible section 457 plan.

Domestic relations orders which satisfy the requirements of section 414(p)(1)(A)(i) and 414(p)(1)(B) of the Code and the procedures established by the administrator for such orders shall be honored by the Plan. Except as provided in the preceding sentence, participants may not assign, commute, pledge, transfer or otherwise convey or encumber the right to receive payments under the Plan.

The Plan also includes a provision permitting a participant to elect an in-service distribution of \$5,000 or less from his or her account in certain limited circumstances set forth thereunder and in accordance with section 457(e)(9)(A).

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) for the exclusive

benefit of the participants and their beneficiaries. All amounts deferred under the Plan must be transferred to Trust within an administratively reasonable time period.

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 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)(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)(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(e)(10) states that a participant shall not be required to include in gross income any portion of the entire amount payable to such participant solely by reason of the transfer of such portion from one eligible deferred compensation plan to another eligible deferred compensation plan.

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

1. The Plan constitutes an eligible deferred compensation plan as defined in section 457(b) of the Code, as amended by the Small Business Job Protection Act of 1996 and the Economic Growth and Tax Relief and Reconciliation Act of 2001.

2. Amounts of compensation deferred pursuant to the Plan, including any income attributable to the deferred compensation, will be includible in the gross income of the

recipient under section 457(a)(1)(A) of the Code only for the taxable year or years in which such amounts are paid to the participant under the Plan.

3. Adoption of the Plan by a participating employer that enters into an adoption agreement pursuant to the Plan will not cause the Plan to fail the requirements of an eligible deferred compensation plan within the meaning of section 457 of the Code and the regulations thereunder.

Except as specifically ruled upon above, no opinion is expressed as to the federal income tax consequences of the Plan under any other provision of the Code. If the Plan is significantly modified, this ruling will not necessarily remain applicable.

This ruling is directed only to X and applies only to the plan and trust submitted on May 6, 2002, as revised by amendments submitted on January 20, 2003. Section 6110(k)(3) of the Code provides that it 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 conclusions in the ruling. See section 12.04 of Rev. Proc. 2003-1, 2003-1 I.R.B. 1. However, when the criteria in section 12.05 of Rev. Proc. 2003-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely yours,

ROBERT D. PATCHELL  
Chief, Qualified Plans  
Branch Two  
Office of the Division Counsel/  
Associate Chief Counsel  
(Tax Exempt and  
Government Entities)

Enclosure

Copy of letter

Copy for section 6110 purposes