

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EB:QP2-PLR-165295-02

Date:

June 6, 2003

Legend

X =

EIN:

Plan =

Dear _____ :

This is in response to your letter of _____, and subsequent correspondence requesting a ruling with respect to the Plan, which X intends to be an eligible deferred compensation plan under section 457 of the Internal Revenue Code of 1986. X is represented to be an eligible employer within the meaning of section 457(e)(1)(A).

Membership in the Plan is available to employees of X. The term employee means any common law employee (who receives a W-2) of X who is eligible to contribute at least \$200.00 annually. Under the Plan an employee may elect to defer compensation that would have been received for services rendered to X in any taxable year until death, severance from employment with X, or until the occurrence of an unforeseeable emergency. 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.

Each employee may become a participant in the Plan following execution of a Salary Reduction and Participation Agreement ("Agreement") which establishes the amount of the deferral. No portion of the compensation of an employee shall be deferred for any calendar month or portion of a calendar month unless the employee enters into the Agreement prior to the beginning of the month. 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 or she attains normal retirement age under the Plan. In

PLR-165295-02

addition, the Plan also provides for the age 50 plus catch-up contributions described in section 414(v). The amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457.

With certain limitations, a participant may elect the manner in which his or her deferred amounts will be distributed. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 401(a)(1)(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) of the Code prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d).

Section 457(d)(1)(A) of the Code 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) of the Code 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(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).

PLR-165295-02

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

1. The Plan is an eligible state deferred compensation plan within the meaning of section 457(b) of the Code and the regulations thereunder.
2. The amounts of compensation deferred under the Plan, including any income attributable to the deferred compensation, will be includible in gross income only for the taxable year or years in which such amounts are paid to a participant or a participant's beneficiary in accordance with the terms of the Plan.

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, the ruling will not necessarily remain applicable.

This ruling is directed only to X and applies only to the plan and trust submitted on November 15, 2002 as revised by amendments submitted on April 17, 2003, May 14 and May 23, 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, 44. However, when the criteria in section 12.06 of Rev. Proc. 2003-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Robert D. Patchell
Chief, Qualified Plans Branch 2
Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt and Government
Entities)

Enclosure
Copy of letter
Copy for section 6110 purposes

cc: