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Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EB:QP:2-PLR-107949-03

Date:

AUG 26 2003

Employer=
EIN =
Plan =

Dear :

This is in response to your letter dated and subsequent correspondence on behalf of the above-referenced Employer requesting a ruling on the federal income tax consequences of the Employer's deferred compensation plan.

Employer represents that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. The Plan will be offered to a select group of management and highly compensated employees as an additional opportunity to defer compensation for retirement.

The Plan is intended to be an eligible deferred compensation plan described in section 457(b) of the Code. Only individuals who perform services for the Employer may be participants. Under the terms of the Plan, participants may annually defer compensation up to the applicable dollar amount so long as the agreement to defer is entered into before the month for which compensation is deferred. No catch-up contributions are permitted under the Plan.

Nonelective contributions are permitted under the plan. All amounts of deferred compensation, all property and rights purchased with such amounts, and all income attributable to those amounts, property or rights shall remain the property and rights of the Employer subject only to the claims of the Employer's general creditors.

The Plan permits in-service distributions of \$5,000 or less if no amount has been deferred under the plan with respect to the participant during the 2 year period ending on the date of the distribution, and there has been no prior distribution under the Plan to the participant.

Except as described in the preceding paragraph, Plan amounts may not be made available to participants or beneficiaries earlier than the calendar year in which the participant attains age 70 $\frac{1}{2}$, or when the participant has a severance from employment with the Employer. The Plan must meet the minimum distribution requirements of section 401(a)(9).

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan (as described 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 amount 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.

Treas. Reg. sec. 1.457-7(c)(1) states that amounts deferred (including amounts previously deferred) under an eligible plan will not be considered made available to the participant solely because the participant is permitted to choose among various investment modes under the Plan for the investment of such amounts whether before or after any payments have commenced under the plan.

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 described in section 457(b) of the Code.
- 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 only for the taxable year or years in which such amounts are paid or otherwise made available to a participant or beneficiary under 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, this ruling will not necessarily remain applicable.

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This ruling is directed only to Employer and applies only to the Plan submitted by a transmittal letter dated December 19, 2002, as revised by amendments submitted on August 11, 2003. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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