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Legend

City X =  
EIN:  
State Y =  
City X Eligible Plan =

Trust =

Dear :

This responds to a letter dated August 5, 2004, and subsequent correspondence, submitted by your authorized representative, requesting a ruling concerning whether the eligible plan established and adopted by City X, constitutes an eligible deferred compensation plans within the meaning of section 457 of the Internal Revenue Code of 1986, as amended ("Code") and the Income Tax Regulations ("Regulations") thereunder.

City X is represented to be an eligible employer within the meaning of section 457(e)(1)(A) of the Code and has adopted the City X Eligible Plan for its employees.

The City X Eligible Plan provides that a 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 Participation 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 or she 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 also provides that a participant can only utilize one of these two catch-up contribution provisions

during a single year. The amounts that may be 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, beneficiary or alternate payee may elect the manner in which his/her deferred amounts will be distributed. The manner and time of benefit payout must meet the distribution requirements of sections 401(a)(9) and 457(d) of the Code.

The City X Eligible 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 City X Eligible Plan must be transferred to the trust within an administratively reasonable time period. The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and not subject to pledge, transfer or encumbrance.

The City X Eligible Plan has provisions regarding the circumstances involved with multiple section 457 plans of the same employer, including treating all such plans as a single plan and specific language for the coordination of deferral limits, the correction of any excess deferrals, and the limits on normal retirement age.

The City X Eligible Plan permits transfers between the Plan and other eligible governmental section 457 plans. The Plan sets forth the requirements of paragraphs (2), (3) and (4) of section 1.457-10(b) of the regulations which must be satisfied before a transfer can be made to or from the Plan.

The City X Eligible Plan further provides that all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the plan. The Trust was established pursuant to a written agreement that is represented to be a valid trust under the laws of State Y.

Except as provided in the City X Eligible Plan concerning approved Domestic Relation Orders that satisfy the requirements of section 414(p), the rights of any participant or beneficiary under the plan shall not be subject to the rights of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third persons.

The terms of the Trust used in connection with the City X Eligible Plan make it impossible, prior to the satisfaction of all liabilities with respect to participants and their beneficiaries, for any part of the assets and income of the trust to be used for, or diverted to, purposes other than the exclusive benefit of participants and their beneficiaries.

Section 457 of the Code provides rules for the deferral of compensation by an individual participant 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) 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 70-1/2, 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. However, section 401(a)(9)(C)(i) generally allows plans to postpone the required beginning date until April 1 of the calendar year following the later of the calendar year in which the employee retires or in which he attains age 70-1/2.

A basic requirement prescribed by section 457(b)(5) is that an eligible section 457 plan must meet the section 457(d) distribution requirements described above in order to retain its tax- deferred eligible status. A section 457 plan would violate these provisions of section 457(b)(5) and the regulations thereunder if the participant or anyone else received a distribution earlier than the earliest date established in section 457(d)(1)(A).

Section 457(e)(9)(A) provides that the total amount payable to a participant under the plan will not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if (i) such amount does not exceed \$ 5,000, and (ii) such amount may be distributed only if -- (I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and (II) there has been no prior distribution under the plan to such participant under this option.

Section 1.457-6(c)(2) of the Income Tax Regulations define an unforeseeable emergency as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152(a)); loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's

insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary.

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.

Under the terms of the Plan and Trust, the trustee must hold all of the section 457(b) plan assets for the exclusive benefit of the participants and their beneficiaries, and all amounts deferred under the Plan must be transferred to a trust meeting the requirements of section 457(g) of the Code within an administratively reasonable time period.

Section 457(e)(10) provides 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.

Section 1.457-10(b)(1) of the Regulations provide that an eligible governmental plan may provide for the transfer of amounts deferred by a participant or beneficiary to another eligible governmental plan if the conditions in paragraphs (b)(2), (3), or (4) of section 1.457-10(b)(1) are met and such transfer of assets is not between an eligible governmental plan and a tax-exempt entity's eligible plan.

Section 1.457-10(b)(6) of the Regulations further provides that upon the transfer of any amount between eligible plans under paragraphs (b)(1) through (b)(4) of section 1.457-10(b)(1), if the participant is performing services for the entity maintaining the receiving plan, such amount is subject to the restrictions of section 1.457-6 (relating to when distributions are permitted to be made to a participant under an eligible plan) in the receiving plan in the same manner as if the transferred amount had originally been deferred under the receiving plan.

Based upon the facts summarized above, and provided that the City X Eligible Plan is amended as stated in the letter submitted by your authorized representative, dated December 14, 2004, we conclude as follows:

1. The City X Eligible Plan constitutes an eligible deferred compensation plan within the meaning of section 457 of the Code and the Income Tax Regulations thereunder;

2. The amounts of compensation deferred under the City X Eligible Plan, including any income attributable to the deferred compensation, will be includible in gross income of the recipient 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;

3. The Trust established with respect to the plan under section 457(b) of the Code is treated under section 457(g) as a trust exempt from taxation under section 501(a);

4. The City X Eligible Plan provisions permitting transfers between the City X Eligible Plan and any other eligible governmental 457(b) plan, pursuant to Treasury Regulations, will not cause any amount to be includible in the participant's gross income under section 457(a) of the Code.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the above described City X Eligible Plan. If the amended and restated City X Eligible Plan is significantly modified, this ruling will not necessarily remain applicable. This ruling is directed only to City X and applies only if the City X Eligible Plan submitted on

is revised in accordance with the modifications submitted on

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

Sincerely,

Robert D. Patchell  
Branch Chief, Qualified Plans Branch 2 (Employee  
Benefits)  
(Tax Exempt & Government Entities)

Enclosure (1)