

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID

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CC:TEGE:EB:QP2

PLR-158734-05

Date: May 26, 2006

Legend:

Employer =

EIN =

State X =

Plan =

Dear :

This responds to your letter of November 16, 2005, on behalf of Employer, requesting a ruling concerning the deferred compensation plan (the "Plan") and related trust which Employer 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). Employer is represented to be a political subdivision of State X which is an eligible employer described in section 457(e)(1)(A) of the Code.

Under the Plan, an eligible participant may elect to defer compensation that would have been received for services rendered to Employer in any taxable year until death, severance from employment with Employer, attainment of age 70 1/2, or until the occurrence of an unforeseeable emergency. The Plan also includes a provision for an in-service distribution of \$5,000.00 or less to be paid to a participant from his or her

account in certain limited circumstances specified under the Plan and described in section 457(e)(9)(A).

Under the Plan, the participant's election to defer compensation for any month must be filed prior to the beginning of the month in which his or her salary reduction agreement becomes effective for such amounts. 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 provides for the age 50 plus catch-up contributions described in section 414(v). However, the Plan also provides that a participant can utilize only one of these two catch-up 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.

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

The Plan provides that the interests of each participant or beneficiary under the Plan are not subject to the claims of the participant's or beneficiary's creditors. Neither the Participant nor beneficiary has the right to sell, assign, transfer, or otherwise convey the right to receive any payments under the Plan. All the investments, amounts, property, and rights held under the trust are held for the exclusive benefit of Participants and beneficiaries.

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

Section 457(a)(1)(A) of the Code provides that in the case of a participant in an eligible deferred compensation plan of a governmental employer, 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 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.

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).

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

1. The Plan established by Employer is an eligible deferred compensation plan as described in section 457(b) of the Code.
2. Assuming that it is a valid trust under State X law, the trust established under the Plan is treated under Code section 457(g) as a trust that is treated as an organization exempt from taxation under Code section 501(a) of the Code.
3. Amounts of compensation deferred under the Plan, including any income attributable to the deferred compensation, will be includible in gross income for the taxable year or years in which such amounts are paid to a participant or beneficiary (including one named in a domestic relations order) in accordance with the terms of the Plan.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than Employer's Plan described above. In addition, this ruling applies only to amounts deferred (including the earnings thereon) after the date this ruling is issued. This ruling is directed only to Employer and applies only to the Plan as submitted on November 16, 2005. If the Plan is significantly modified, this ruling will not necessarily remain applicable. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling 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 conclusion in the ruling. See section 11.04 of Rev. Proc. 2006-1, 2006-1 I.R.B. 1, 49. However, when the

criteria in section 11.06 of Rev. Proc. 2006-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely,

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

Enclosure (1)
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