

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200940005**
Release Date: 10/2/2009

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 457.01-00, 457.05-00,
457.12-02

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP2
PLR-102912-09

Date:
July 01, 2009

Legend

City C =

Plan =

Dear :

This responds to your authorized representative's original letter and subsequent correspondence, on behalf of City C and its section 457 Plan (the "Plan"), requesting a ruling concerning the proposed amended deferred compensation plan which City C intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the "Code"), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and in subsequent legislation. The Plan has been or will be adopted only by City C and its related agencies and instrumentalities which are all represented to be eligible governmental employers described in section 457(e)(1)(A) of the Code.

Under the Plan, a participant, who must be an employee of City C or one of its related agencies and instrumentalities, may elect to defer compensation that would have been received for services rendered to City C in any taxable year until death, severance from employment, attainment of age 70½, or until the occurrence of an unforeseeable emergency. The Plan also contains a provision allowing an elective in-service distribution of \$5,000.00 or less to be paid to a participant from his or her account in certain limited circumstances set forth thereunder and in section 457(e)(9)(A).

The Plan also permits its board to establish a program allowing the participants to take loans from their section 457(b) plan accounts, subject to certain restrictions. Loans made under the Plan are subject to rules in the Plan and in § 1.457-6(f)(2) of the Income Tax Regulations, including provisions restricting the maximum amount and term of a plan loan.

A participant's election under the Plan to defer compensation not yet paid (including post-severance compensation paid within 2½ month after severance from employment) must be filed prior to the beginning of the month in which the compensation to be deferred is paid or made available. 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.

The amounts that may be deferred by a participant in the plan under the annual maximum limitation and the catch-up provisions are within the limitations of section 457(b), including the section 457(c) coordinated deferral provision.

The Plan also provides for the age 50 plus catch-up contributions described in sections 414(v) and 457(e)(18). However, the Plan provides that a participant can only utilize one of the two catch-up contribution provisions during a single year.

With certain limitations, a participant, beneficiary or alternate payee may elect the manner in which his/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)(9) and 457(d) of the Code.

The Plan provides that amounts of compensation deferred thereunder are to be transferred to and held in custodial accounts 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 appropriate accounts within a short period after such compensation would otherwise have been paid in compliance with § 1.457-8(a)(2)(ii) of the regulations. The custodial account agreement with a financial institution custodian provides that the amount held therein shall be held for the exclusive benefit of the plan's participants and beneficiaries pursuant to section 457(g). The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and not subject to pledge, attachment or encumbrance.

Under the Plan, a participant may elect to have any portion of an allowable distribution which constitutes an eligible rollover distribution described in section 402(c)(4) of the Code paid directly to another eligible retirement plan described in section 402(c)(8)(B) such as an individual retirement account (IRA) in a direct rollover.

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) 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 70½, 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(e)(1)(A) defines an eligible employer to be a state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state.

Section 457(e)(16) provides that with respect to an eligible retirement plan established and maintained by a governmental employer, if 1) any portion of the balance to the credit of an employee in the plan is paid to him/her in an eligible rollover, 2) the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and 3) in the case of a distribution of non-monetary property, the amount so transferred consists of the property distribution, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 457(g) 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 example in custodial accounts or annuity contracts, for the exclusive benefit of participants and their beneficiaries. Section 457(g)(3) provides 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) which means such accounts and contracts would be treated as organizations exempt from taxation under section 501(a).

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

1. The proposed restated Plan of City C constitutes an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986, as amended under EGTRRA and subsequent legislation.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(A) in the recipient's gross income only for the taxable year or years in which amounts are paid to a participant or beneficiary in accordance with the terms of the Plan.
3. The Plan satisfies the trust requirement of section 457(g) of the Code through a custodial account arrangement described in sections 401(f) and 457(g)(3) which shall be treated as a trust which is an organization exempt from taxation under section 501(a) of the Code.
4. Any payment made from the Plan in the form of an eligible rollover distribution (as defined in section 402(c)(4) of the Code), including a direct rollover, is not includible in gross income in the year paid to the extent the payment is transferred to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) within 60 days, including the transfer to the eligible retirement plan of any property distributed from the Plan..

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 Plan. If the restated Plan is significantly modified, this ruling will not necessarily remain applicable.

No ruling was requested and no opinion is expressed concerning the amount included by a participant in gross income as a result of the rollover of an eligible rollover distribution from the Plan into a Roth IRA (as defined in section 408A of the Code).

This ruling is directed only to the Plan and not to any other section 457(b) plan, and it applies only if City C adopts the proposed restated Plan submitted on January 5, 2009, as revised by the amendments submitted on April 2, 2009. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Cheryl Press
Senior Counsel, Qualified Plans Branch 2
(Employee Benefits)
(Tax Exempt & Government Entities)

Enclosure (1)