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Date:
April 04, 2019

In Re:

State Agency =
Plan A =
Plan B =
Trust =
State =

Dear :

This letter responds to your authorized representative's August 28, 2018 letter and subsequent correspondence, on behalf of the State and its State Agency, requesting rulings concerning the Plan, the State's restated deferred compensation plan, which is intended to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the Code) amended under the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 and subsequent legislation, and the regulations thereunder. This letter does not address the supplement to the Plan.

The following facts and representations have been submitted under penalties of perjury in support of your request:

The restated Plan has been adopted by State which is represented to be an eligible governmental employer described in section 457(e)(1)(A). The State Agency administers the Plan on behalf of the State.

Under the Plan, a participant, who must be an eligible employee of State or one of its related agencies and its instrumentalities, may elect to defer compensation within the Plan's limits that would have been received for services rendered to the State in any taxable year until death, severance from employment, attainment of age 70 1/2, or until

the occurrence of an unforeseeable emergency. The Plan also contains a provision allowing for an unforeseeable emergency. Further, the Plan contains a provision allowing for an in-service distribution of \$5,000 or less to be paid to a participant from his or her account in certain limited circumstances set forth thereunder and from his or her account in certain limited circumstances set forth thereunder and in section 457(e)(9)(A).

Under the Plan, a participant, excluding a beneficiary, whose settlement date has not occurred, may request an unforeseeable emergency withdrawal from the participant's account by filing a written or electronic request with the State Agency. A participant's request for an unforeseeable emergency withdrawal must include evidence deemed necessary by the State Agency. Such request must be made at such time and in such manner as the State Agency determines. An unforeseeable emergency withdrawal made under the relevant section of the Plan shall be subject to the following terms and conditions: a) A participant may withdraw all or any portion of his or her account and withdrawals shall be withdrawn from the participant's subaccounts and investment alternatives in the order determined by the State Agency for withdrawals from the Plan. b) An unforeseeable emergency withdrawal may be made only on account of severe financial hardship to a participant resulting from: (i) An illness or accident of the participant, the participant's spouse, or the participant's dependent (as defined by section 152, without regard to section 152(b)(1), (b)(2) and (d)(1)(b)); (ii) Loss of property due to casualty; or (iii) Other similar extraordinary and unforeseeable circumstances arising as a result of the events beyond the control of the participant that would cause severe financial hardship to the participant if an emergency withdrawal were not permitted.

Under the Plan, an emergency withdrawal may not be in excess of the amount reasonably needed to satisfy the emergency need of the participant. For this purpose, a distribution is not necessary to the extent the emergency is or may be relieved from other financial resources available to the participant, including insurance reimbursement, cessation of deferrals under the Plan A and Plan B, or liquidation of other assets, to the extent the liquidation of such assets would not itself cause severe financial hardship. In accordance with rules and procedures the State Agency may establish, the amount of an unforeseeable emergency withdrawal may include the amount necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the withdrawal.

The State Agency will determine whether the requirements for an unforeseeable emergency are fulfilled under the Plan, after considering all of the relevant facts and circumstances of each case.

The Plan permits the State Agency to allow the Plan's participants to take loans from their Plan accounts, subject to certain restrictions. The loan program complies with the requirements of section 72(p) and its underlying regulations. Loans made under the

Plan are subject to the rules of the Plan and under § 1.457-6(f)(2) of the Income Tax Regulations, including provisions restricting the maximum amount and term of the plan loan.

A participant's election under the Plan to defer compensation not yet paid (including post-severance compensation paid within a limited period 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 section 415(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 section 401(a)(9) and 457(d).

The Plan provides that amounts of compensation deferred thereunder are to be transferred to and held in a trust (Trust) described in section 457(g)(1) for the exclusive benefit of the participants and their beneficiaries. All amounts deferred under the Plan must be transferred to the Trust within a short period after such compensation would otherwise have been paid in compliance with § 1.457-8(a)(2)(II). The rights of any participant or beneficiary to payments pursuant to the Plan are generally non-assignable and not subject to transfer or alienation.

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

The Plan also provides, that a participant, prior to severance from employment, or a beneficiary or alternate payee may elect, pursuant to section 457(e)(17) and in accordance with the State Agency's rules, to transfer a portion or all of the amount in his/her section 457(b) plan account to a defined benefit governmental plan, described in section 414(d), that accepts such transfers, to purchase permissive service credit

described in section 415(n)(3)(A) or make a repayment to which section 415 does not apply under section 415(k)(3) pursuant to the terms of such transferee plan.

Section 457 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) 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) provides that the term “eligible deferred compensation plan” means a plan established and maintained by an eligible employer in which only individuals who perform service for the employer may be participants and which meet the deferral limitations described in section 457(c); which meets the distribution requirements described in section 457(d); which provides for deferral elections described in section 457(b)(4); and, in the case of a governmental plan, which requires the plan assets and income to be held in trust for the exclusive benefit of participants and beneficiaries as described in section 457(g).

Section 457(e)(1) provides that the term “eligible employer” means a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State, and any other organization (other than a governmental unit) exempt from income tax.

Section 457(b)(4) provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month. An eligible plan may provide that if a participant enters into an agreement providing for deferral by salary reduction under the plan, the agreement will remain in effect until the participant revokes or alters the terms of the agreement.

Under section 402A(a), applicable retirement plans may include a qualified Roth contribution program. Section 402A(e)(1) provides that eligible governmental deferred compensation plans are applicable retirement plans. Section 402A(a)(1) provides that elective deferrals of compensation which are designated Roth contributions under qualified Roth contribution programs are not excluded from income in the year of deferral. Section 402A(d)(1) provides that qualified distributions from designated Roth accounts are not includible in gross income.

Section 457(b)(2) provides the basic limits on the amount of eligible annual deferrals. However, a catch-up amount described in section 457(b)(3) may be added to this amount for participants that are within three years of the normal retirement age or, for participants age 50 or older, a catch-up amount may be added as described in section 457(e)(18). A participant eligible for both catch-up provisions is entitled to use the higher

limit of the two. The total annual eligible deferral amount is limited by section 457(c). Coordination of the basic limits and the catch-up limits is described in § 1.457-4(c).

Section 1.457-4(c)(3)(v)(A) provides that a plan may define the normal retirement age for purposes of the last-three-years catch-up provision as any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the State or tax-exempt entity (or a money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70 ½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. For purposes of the last-three-years catch-up provision, an entity sponsoring more than one eligible plan may not permit a participant to have more than one normal retirement age under the eligible plans it sponsors. Section 1.457-4(c)(3)(v)(B) provides a special exception for qualified police and firefighters to retire as early as age 40 for purposes of the last-three-years catch-up provision.

Section 1.457-5 provides that the section 457(c) eligible deferral amount limitation is applied to all eligible plans in which a participant participates in a tax year and is determined on an aggregate basis. If a participant has annual deferrals under more than one eligible plan and the applicable catch-up amount is not the same for each such eligible plan for the taxable year, section 457(c) is applied using the catch-up amount under whichever plan has the largest catch-up amount applicable to the participant. To the extent that the combined annual deferral amount exceeds the maximum deferral limitation, the amount is treated as an excess deferral under § 1.457-4(e). For purposes of determining whether there is an excess deferral resulting from a failure of a plan to apply the deferral limitations, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan (without regard to any differences in funding).

Section 457(d)(1)(A) provides that amounts distributed under an eligible plan 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.

Section 1.457-6(c)(2) provides the requirements for an unforeseeable emergency distribution. An unforeseeable emergency must be defined in the plan 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; 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.

Whether a participant or beneficiary is faced with an unforeseeable emergency is determined based on the relevant facts and circumstances of each case. However, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan. Further, distributions because of an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

Section 457(d)(2) requires a plan to meet the minimum distribution requirements of section 401(a)(9). These requirements are described in §§ 1.401(a)(9)-1 through 1.401(a)(9)-9.

Section 457(d)(3) provides that a governmental plan will not fail to meet the distribution requirements if it provides for in-service distributions of a limited-dollar amount which meet the requirements of section 457(e)(9)(A) and § 1.457-6(e). Section 1.457-6(e) is satisfied if the participant's total amount deferred (the participant's total account balance) which is not attributable to rollover contributions is not in excess of the dollar limit under section 411(a)(11)(A) (i.e., \$5,000 adjusted for inflation), no amount has been deferred under the plan by or for the participant during the two-year period ending on the date of the distribution, and there has been no prior distribution under the plan to the participant of this kind.

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 section 457(b) eligible deferred compensation plan to another section 457(b) eligible deferred compensation plan. Section 1.457-10(b)(1) provides that an eligible government plan may transfer amounts to, and receive amounts from, an eligible government plan if certain conditions are met.

With regard to transfers from an eligible governmental plan to another eligible governmental plan of the same employer, § 1.457-10(b)(4) provides that a transfer from an eligible governmental plan to another eligible governmental plan is permitted if the following conditions are met: (i) the transfer is from an eligible governmental plan to another eligible governmental plan of the same employer; (ii) the transferor plan provides for transfers; (iii) the receiving plan provides for the receipt of transfers; (iv) the participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred

with respect to that participant or beneficiary immediately before the transfer; and (v) the participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the participant or beneficiary is performing services for the entity maintaining the receiving plan.

Section 457(e)(16) provides that with respect to an eligible retirement plan established and maintained by a governmental employer, if (i) any portion of the balance to the credit of an employee in the plan is paid to him/her in an eligible rollover distribution within the meaning of section 402(c)(4), (ii) the employee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and (iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(11) provides that non-spousal beneficiaries may elect to have an eligible rollover distribution paid directly to an inherited IRA.

Under § 1.457-10(e), an eligible governmental plan that permits eligible rollover distributions made from another eligible retirement plan to be paid into the eligible governmental plan is required to provide that it will separately account for any eligible rollover distributions it receives. Amounts contributed to an eligible governmental plan as eligible rollover distributions are not taken into account for purposes of the annual limit on annual deferrals by a participant but are otherwise treated in the same manner as amounts deferred under the plan.

Consistent with section 414(p), § 1.457-10(c) provides for distributions made pursuant to a qualified domestic relations order. If a distribution or payment is made from an eligible plan to an alternate payee pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) apply to the distribution. Section 414(p)(8) provides that the term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

Section 457(e)(17) provides that no amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan or a repayment to which section 415(k)(3) does not apply. Section 1.457-10(b)(8)(i) clarifies that such a transfer may be made before severance from employment.

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 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) provides that custodial accounts and contracts described in section 401(f) will be treated as trusts under rules similar to the rules under section 401(f).

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

1. The restated Plan of State constitutes an eligible deferred compensation plan as defined in section 457(b).
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 Trust under the Plan, established by State, satisfied the requirement of section 457(g), and the Trust shall be treated as an organization exempt from taxation under section 501(a).

The rulings contained in this letter are based upon the Plan's adoption of a proposed amendment. Failing to adopt the proposed amendment will nullify the rulings contained within this letter.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, 2019-1 I.R.B. 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, section 11.05.

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

Sincerely,

Chery Press
Senior Counsel
Qualified Plans Branch 4
Office of Associate Chief Counsel
(Employee Benefits, Exempt
Organizations and Employment Taxes)