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Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:EEE:EB:QP4
PLR-115757-23

Date:
January 31, 2024

In Re:

State S =
Plan X =

Dear _____ :

This letter responds to your authorized representative’s letter dated July 25, 2023, on behalf of State S and Plan X, requesting rulings related to Plan X’s status as a length of service award plan (LOSAP) described in section 457(e)(11)(A) of the Internal Revenue Code.

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

State S is an eligible employer described in section 457(e)(1)(A). Plan X provides length of service awards in the form of retirement and death benefits to long-term eligible volunteers providing qualified services to municipal fire departments and emergency medical services districts of State S. Any municipality of State S maintaining and operating a regularly organized fire department or emergency medical service district that consists wholly of volunteer firefighters, or any part paid, and part-volunteer fire department may provide, by appropriate legislation, for enrollment in Plan X of every firefighter or emergency worker. Plan X defines volunteer as an individual who provides firefighting services, fire prevention services, or emergency medical services for a municipality in accordance with the applicable State S statute, and who does not receive compensation for the services provided except for (1) reimbursement for (or a reasonable allowance for) reasonable expenses incurred in the performance of these services, or (2) reasonable benefits (including benefits under Plan X), and nominal fees for these services, customarily paid by eligible employers in connection with the performance of these services by volunteers.

Once a participant has met Plan X's age and service requirements, the participant is entitled to a monthly benefit in an amount determined under the plan. Plan X also includes provisions for benefits upon a participant's death and provisions addressing payments upon a participant's separation from service if the participant does not meet the age and service requirements.

State S has established a fund for the benefit of the volunteer firefighters and emergency workers to receive and hold all contributions and assets attributable to Plan X. Benefits under Plan X are funded by contributions from the municipalities and plan participants. The State S investment board manages and invests the fund which is placed in the custody of the State S treasurer. Plan X also provides that participants and beneficiaries have an unsecured right to benefits under the plan. It further provides that the assets attributable to the contributions of each municipality will be subject to the claims of that municipality's creditors. The rights of any member or beneficiary to payments under Plan X are nonassignable and nontransferable.

Section 451(a) and § 1.451-1(a) provide that an item of gross income is includible in gross income for the taxable year in which actually or constructively received by a taxpayer using the cash receipts and disbursements method of accounting. Under § 1.451-2(a), income is constructively received in the taxable year during which it is credited to the taxpayer's account, set apart, or otherwise made available so that the taxpayer may draw on it at any time. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Various revenue rulings have considered the tax consequences of nonqualified deferred compensation arrangements. Rev. Rul. 60-31, Situations 1-3, 1960-1 CB 174, holds that a mere promise to pay, not represented by notes or secured in any way, does not constitute receipt of income within the meaning of the cash receipts and disbursements method of accounting. See also, Rev. Rul. 69-650, 1969-2 CB 106, and Rev. Rul. 69-649, 1969-2 CB 106.

Section 457 contains rules for the taxation of eligible deferred compensation plans of eligible employers. The term "eligible employer" is defined in section 457(e)(1) to include 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 tax under subtitle A of the Code.

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

An "eligible deferred compensation plan," as defined in section 457(b), must, among other things, provide that the annual deferral amount for a taxable year shall not exceed the lesser of the applicable dollar amount (as determined under sections 457(b)(2) - \$23,000 in 2024) or 100 percent of the participant's includible compensation.

Section 457(f)(1)(A) provides that if a plan of an eligible employer providing for a deferral of compensation is not an eligible deferred compensation plan, compensation deferred under such plan shall be included in the participant's gross income for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation.

Section 457(e)(11)(A)(ii) provides that a plan paying solely length of service awards to bona fide volunteers or their beneficiaries on account of qualified services performed by such volunteers is treated as not providing for the deferral of compensation under section 457. Section 457(e)(11)(C) defines "qualified service" as fire fighting and prevention services, emergency medical services, and ambulance services.

Section 457(e)(11)(B) provides special rules applicable to a LOSAP. Section 457(e)(11)(B)(i) defines the term "bona fide volunteer" to include only persons whose only compensation received for performing qualified services are reimbursements for (or reasonable allowances for) reasonable expenses incurred in performing such services or reasonable benefits (including length of service awards), and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers.

Section 457(e)(11)(B)(ii) provides that a LOSAP may not provide for an aggregate amount of length of service awards accruing with respect to any year of service by a volunteer that exceeds \$6,000.

Plan X established by State S satisfies the requirements of section 457(e)(11)(A)(ii). Plan X provides length of service awards only to long-term eligible volunteers that provide qualified services (as defined in section 457(e)(11)(C), i.e., fire fighting and prevention services, emergency medical services, and ambulance services) to municipal fire departments and emergency medical districts. Plan X also satisfies section 457(e)(11)(B)(i) by limiting eligible volunteers to persons who receive no compensation for their services other than reimbursements for reasonable expenses, nominal fees, or reasonable benefits customarily paid by eligible employers in connection with the performance of qualified services by volunteers. Finally, Plan X satisfies section 457(e)(11)(B)(ii) by limiting the aggregate amount of awards for any year of service to \$6,000.

Since Plan X qualifies as a LOSAP under section 457(e)(11)(A)(ii), neither section 457(a) nor section 457(f) apply to benefits under the plan. Instead, amounts distributable under Plan X are includible in gross income under section 451 and the regulations thereunder, when paid or made available without substantial limitation or restriction.

Federal Insurance Contribution Act (FICA) taxes are composed of Old-Age, Survivors, and Disability Insurance Tax (social security taxes) and hospital insurance taxes (Medicare taxes). Social security taxes are imposed by sections 3101(a) (employee's portion) and 3111(a) (employer's portion) and Medicare taxes are imposed by sections 3101(b) (employee's portion) and 3111(b) (employer's portion) on all wages as defined in section 3121(a). Section 3121(a) defines wages as all remuneration for employment, including the

value of remuneration paid in any other medium (including benefits), except that wages does not include certain remuneration as specified in section 3121(a).

Section 3121(a)(5)(I) provides that any payment made to, or on behalf of, an employee or his beneficiary under a plan described in section 457(e)(11)(A)(ii) and maintained by an eligible employer as defined in section 457(e)(1) is not treated as “wages” for purposes of determining whether the FICA tax applies to such payment.

Based upon the information submitted, and the representations made, we conclude as follows:

1. Plan X is a LOSAP within the meaning of section 457(e)(11)(A). Therefore, Plan X is not subject to sections 457(b) or (f).
2. Amounts paid to participants, or their beneficiaries are includible in the recipient’s gross income only in the taxable year in which such amounts are paid or otherwise made available, pursuant to section 451.
3. Benefits paid under Plan X are not treated as wages for purposes of FICA taxes, pursuant to section 3121(a)(5)(I).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2024-1, 2024-1 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. 2024-1, section 11.05.

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

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

Cheryl Press
Senior Counsel, Qualified Plans Branch 4
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: