

INTERNAL REVENUE SERVICE

9/29/2000

Number: **200102013**

Release Date: 1/12/2001

Index Number: 457.00-00

PLR-104537-00/CC:TEGE:EB:QP1

X =
Board =
EIN: =
Plan =

Dear :

This is in response to your letter of February 24, 2000, and subsequent correspondence requesting a ruling with respect to X's Deferred Compensation Plan which X intends to be an eligible deferred compensation plan under section 457 of the Internal Revenue Code of 1986 (the Code).

The Plan was established and executed according to a legislative delegation of authority to the Board from X and in accordance with an enabling statute.

A previous plan had received a favorable private letter ruling from the Internal Revenue Service. The Plan has been amended to comply with the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997 and the Uniformed Services Employment and Reemployment Rights Act of 1994. The Plan is effective as of January 1, 1999.

Employer is defined to mean X and its agencies or departments which are deemed to have adopted the Plan by the act of the Board and the enabling statute.

An employee may become a participant by entering into a Participation Agreement in accordance with the Plan. At the time of entering into or amending a Participation Agreement, a participant must agree to defer at least the minimum amount as provided by the enabling statute and prescribed by the Plan Administrator.

Compensation will be deferred for any calendar month only if a Participation Agreement providing for the deferral has been entered into before the beginning of the month, and further provided that the month is not earlier than the first calendar month which begins at least 31 days after the execution of the Participation Agreement.

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 contribution for amounts deferred for one or more of the participant's last three years ending before he or she attains normal retirement age under the Plan. The amounts that may be deferred are within the limitations set out in section 457 of the Code.

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, alternate

payees and beneficiaries under the Plan. All amounts of compensation deferred under the plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants.

During the participant's life, a participant shall direct the investment of his or her account. After the participant's death or after a Plan Approved Domestic Relations Order is effective, the beneficiary or alternate payee shall direct the investment of the account or his or her segregated account.

Payments to participants may begin upon their separation from service. Payments to their beneficiaries may begin upon the participant's death. All payouts must conform to sections 401(a)(9) and 457(d) of the Code.

The Plan can accept a transfer of compensation previously deferred under another plan of deferred compensation maintained by another employer as an eligible Code section 457 plan. A participant who separates from service with X and accepts employment with another employer that maintains an eligible 457 plan may elect to transfer his or her compensation deferred under the Plan to that other plan, if the other plan can accept such transfers.

Except pursuant to a Plan Approved Domestic Relations order, participants may not sell assign, commute, pledge, transfer or otherwise convey or encumber the right to receive payments under the Plan.

The Plan also includes a provision permitting a participant to elect an in-service distribution of \$5,000 or less from his or her account in certain limited circumstances set forth thereunder and in accordance with section 457(e)(9)(A).

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) 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.

Treas. Reg. sec. 1.457-1(b)(2) states that amounts deferred (including amounts previously deferred) under an eligible plan will not be considered made available to the participant solely because the participant is permitted to choose among various investment modes under the plan for the investment of such amounts whether before or after payments have commenced under the plan.

Section 457(g)(1) states that a plan maintained by a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State shall not be treated as an eligible deferred compensation plan unless all assets and

income of the plan are held in trust for the exclusive benefit of participants and their beneficiaries.

Section 457(e)(10) states 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.

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

1. The Plan constitutes an eligible state deferred compensation plan as defined in section 457(b) of the Code, as amended under sections 1447 and 1448 of the Small Business Job Protection Act of 1996.

2. Amounts of compensation deferred pursuant to the Plan, including any income attributable to the deferred compensation, will be includible in the gross income of the recipient only for the taxable year or years in which such amounts are paid or otherwise made available to the participant under the Plan.

Except as specifically ruled upon above, no opinion is expressed as to the federal income tax consequences of the Plan under any other provision of the Code. If the Plan is significantly modified, this ruling will not necessarily remain applicable.

This ruling is directed only to X and applies only to the plan and trust submitted on February 24, 2000, as revised by amendments submitted on September 8, September 11 and September 28, 2000. Section 6110(k)(3) of the Code provides that it 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 conclusions in the ruling. See section 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, 46. However, when the criteria in section 12.05 of Rev. Proc. 2000-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely yours,
ROBERT D. PATCHELL
Acting Chief, Qualified Plans Branch Two
Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt and Government Entities)