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Department of the Treasury

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Person to Contact:
Susan M. Lennon
Telephone Number:
(202) 622-6030
Refer Reply To:
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Date:
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Company =
Plan =

This letter is in reply to your letter dated October 5, 2000 on behalf of the Company. The Company has requested a ruling on the federal income tax consequences under sections 451 and 404 of the Internal Revenue Code with respect to the Plan.

The Company has established the Plan, a nonqualified deferred compensation plan, to provide retirement benefits to key management personnel in order to provide employees with an incentive to remain with the Company and to perform to the best of their abilities. The individual participants will be selected by the Compensation Committee of its Board of Directors (the "Committee"). The Committee may also remove a participant from the Plan with or without cause.

The basic benefit under the Plan is a monthly payment for life starting when a participant becomes eligible for payment of benefits after termination of employment. The benefit is equal to a stated percent (based on the participant's years of service under the Plan) of the participant's final average pay (as defined under the Plan) less the participant's primary social security benefit (as defined under the Plan). The Plan also provides for a survivorship benefit payable as a contingent annuity to a participant's spouse following the death of the participant. No other benefits are payable following the participant's death.

A participant's right to payments under the Plan vests upon such participant's attainment of either (a) ages 62 with at least 5 years of credited service or (b) age 55

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with at least 10 years of credited service. The benefit for a participant who starts benefits before age 62 but after age 55 is reduced based on actuarial equivalent factors described in the Plan. The Plan provides for accelerated vesting in the event of a change of control of the Company. In general, if a vested participant is removed from participation in the Plan, then the participant's accrued benefit shall be frozen as of the removal date, and payment shall commence at retirement. If the participant does not meet the requirements for vesting as of the removal date, no benefit is preserved in connection with the participant's prior participation in the Plan. The Plan further provides that a participant will forfeit all benefits, both vested and unvested, upon a finding of misconduct or competition with the Company, both as defined in the Plan.

The Plan provides that benefits shall be paid from the general assets of the Company. Except for the power to select a payment option with a spouse as a contingent beneficiary, no interest of a participant or spouse or representative of a participant may be directly or indirectly transferred, encumbered, seized by legal process or in any other way subjected to the claims of creditors of that party. Participants rights under the Plan shall be only as general creditors of the Company. The Company may but is not required to set aside funds in advance for payment of benefits under the Plan.

Section 451(a) of the Internal Revenue Code and section 1.451-1(a) of the Income Tax Regulations provide that an item of gross income is includible in gross income in the taxable year in which it is actually or constructively received by a taxpayer using the cash receipts and disbursements method of accounting. Under section 1.451-2(a) of the Regulations, income is constructively received in the taxable year during which it is credited to a 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, 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 C.B. 106, and Rev. Rul. 69-649, 1969-2 C.B. 106.

Section 404(a)(5) of the Code provides the general deduction timing rules applicable to any plan or arrangement for the deferral of compensation, regardless of the Code section under which the amount might otherwise be deductible. Pursuant to section 404(a)(5) and section 1.404(a)-12(b)(2) of the regulations, and provided that they otherwise meet the requirements for deductibility, amounts of contributions or compensation deferred under a non-qualified plan or arrangement are deductible in the taxable year in which they are paid or made available, whichever is earlier.

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Provided that the Plan is unfunded for purposes of Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA) and based on the information submitted and representations made, we conclude that:

1. Under the economic benefit and constructive receipt doctrines of sections 61 and 451 of the Code, benefits payable under the Plan to a participant shall not result in taxable income for the participant or the participant's beneficiaries under the cash receipts and disbursements method of accounting until the taxable year in which the benefits are actually paid or otherwise made available.

2. The Company is entitled to a deduction pursuant to section 404(a) and 404(a)(5) of the Code for the amounts paid or made available under the Plan in the taxable year in which such amounts are includible in the gross income of the participant or his beneficiary, provided such amounts otherwise meet the requirements for deductibility under section 162.

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

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

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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,
Charles T. Deliee
Chief, DC/ACC:TEGE:EB:EC
Office of the Associate Chief Counsel (Tax
Exempt and Government Entities)

Copy for 6110 purposes