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PLR-165227-03

Date:  
March 21, 2005

Entity A =  
State S =

Dear :

This is in response to your letter of November 4, 2003, and subsequent correspondence requesting a ruling on the federal income tax consequences of Entity A's Model Deferred Compensation Plan ("the Plan") which Entity A, represented to be a State S public instrumentality described in section 457(e)(1)(A), intends to be an eligible deferred compensation plan under section 457 of the Internal Revenue Code of 1986, as well as a trust which A has established, pursuant to a trust agreement, to hold the assets of the Plan. Any state or local governmental entity in State S that adopts the Plan and Trust agreement will be an employer under the Plan. The Plan and Trust will be administered by Entity A.

Under the Plan, an employee may elect to defer compensation he would have received for service rendered to his employer in any taxable year until severance from employment with such employer, attainment of age 70 ½, or the occurrence of an unforeseeable emergency. The election to defer compensation must be made prior to the beginning of the month for which the compensation is deferred by a participant in any taxable year. The Plan also provides for a catch-up contribution for amounts deferred in 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 are within the limitations set out in section 457 of the Code.

With certain limitations, a participant or his beneficiary may elect the time and manner in which his deferred amounts will be distributed. The election must be made prior to the date any such amounts become available to the participant or the beneficiary. If the participant or his beneficiary fails to make a timely election concerning distribution of the deferred amounts, he shall receive them on the date and in the manner prescribed by the Plan. The Plan provides that the time and manner of benefit payout must meet the distribution requirements of sections 401(a)(9) and 457(d)(2) of the Code.

The Plan provides that amounts of compensation deferred thereunder are to be transferred to and invested in a trust described in section 457(g)(1) of the Code for the exclusive benefit of the participants and their beneficiaries within an administratively reasonable time period. The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and not subject to pledge, transfer or encumbrance.

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 or otherwise made available to the participant or beneficiary.

Section 457(b)(5) of the Code prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457 (d).

Section 457(d)(1)(A) of the Code 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 or 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 as determined under Treasury regulations.

Section 457 (g) of the Code 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).

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

1. The Plan is an eligible deferred compensation plan as described in section 457(b) of the Internal Revenue Code of 1986, as amended by EGTRRA, and the Treasury Regulations thereunder.
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 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 Agreement established with respect to the Plan under section 457(b) is treated under section 457(g) as an organization exempt from taxation under section 501(a).

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 Entity A and applies only to the plan and trust submitted on November 3, 2003, as revised by amendments dated February 22, 2005. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Robert D. Patchell  
Chief, Qualified Plans Branch 2 (Employee  
Benefits)  
(Tax Exempt & Government Entities)

cc:  
Copy of letter for section 6110 purposes