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Person To Contact:

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March 10, 2004

Employer =  
EIN =  
Plan =

Dear :

This is in response to your letter dated July 1, 2003 and subsequent correspondence on behalf of the above-referenced Employer requesting a ruling on the federal income tax consequences of the Employer's Deferred Compensation Plan.

Employer represents that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (the Code). The Plan will be offered to a select group of management and highly compensated employees who have materially contributed to the success of the Employer, effective as of October 1, 2002. The purpose of the Plan is to allow certain employees to defer current compensation to enhance the accumulation of retirement income.

The Plan limits the amount of compensation a member can elect to defer in any given Plan Year to the lesser of (1) the applicable dollar amount as set forth in section 457(e)(15) of the Code, or (2) 90% of a member's includible compensation. The Plan allows for additional limited catch-up contributions and provides that for each of the three calendar years ending before a member attains age 65, the maximum amount that may be contributed to the Plan cannot exceed the lesser of (1) twice the dollar amount set forth in section 457(e)(15), or (2) the amount of the underutilized limitation for a member's taxable year.

The participant's election to defer compensation not yet paid or made available must be filed prior to the beginning of the month in which his or her salary reduction agreement becomes effective for such amounts.

The Plan permits members to withdraw amounts credited to their accounts to the extent necessary to satisfy an emergency created by an unforeseeable emergency. The Plan defines unforeseeable emergency in a manner that is consistent with section 1.457-6(c) of the Income Tax Regulations.

Except as described in the preceding paragraph, Plan amounts may not be made available to participants or beneficiaries earlier than the calendar year in which the participant attains age 70 ½ or when the participant has a severance from employment with Employer. The Plan meets the minimum distribution requirements of section 401(a)(9).

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan (as described in section 457(b)).

Section 457(a)(1)(B) of the Code provides that in the case of a participant in an eligible deferred compensation plan of a tax-exempt employer, any amounts 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) prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d).

Section 457(b)(6) requires an eligible plan of a tax-exempt employer to provide that i) all amounts of compensation deferred under the plan, ii) all property and rights purchased with such amounts, and iii) all income attributable to such amounts, property, or rights must remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the employer's general creditors.

Section 457(d)(1)(A) 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 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.

Treas. Reg. Sec. 1.457-7(c)(10) 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 any payments have commenced under the Plan.

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

- 1.) The Plan constitutes an eligible deferred compensation plan as described in section 457(b) of the Code.
- 2.) Amounts of compensation deferred pursuant to the Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(B) 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 a participant or beneficiary 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 Employer and applies only to the Plan submitted by transmittal letter dated July 1, 2003, as revised by amendments submitted on March 8, 2004. Section 6110(k) (3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

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