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Person To Contact:

Telephone Number:

Refer Reply To:  
CC:TEGE:EB:QP2  
PLR-103210-13

Date:  
July 17, 2013

TY: calendar year

Plan =

State S =

Entity E =

Dear :

This responds to your authorized representative's original letter and subsequent correspondence, on behalf of State S, requesting a ruling concerning its deferred compensation plan (the "Plan") which State S intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the "Code"), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and in subsequent legislation. The Plan will be administered by State S's Entity E. The Plan has been or will be adopted only by State S and its political subdivisions and instrumentalities which adopt and choose to participate in the Plan.

Plan participation is mandatory for certain classes of eligible employees. For all other classes of eligible employees, participation is voluntary. Under the Plan, a participant who is currently an employee of State S, or one of its participating political subdivisions or instrumentalities, may elect to defer compensation that would have been received for

services rendered to his/her employer in any taxable year until death, severance from employment, attainment of age 70 1/2, or the occurrence of an unforeseeable emergency.

The Plan permits participants to defer compensation on a pre-tax basis. The plan also permits full time employees of State S (and other adopting employers) to elect to make designated Roth contributions on an after-tax basis in accordance with the provisions of sections 402A(c) and 457. In addition, the participant may elect to make deferrals into the Plan, upon severance of employment, of accumulated sick pay, accumulated vacation pay, and accumulated back pay as permitted by section 457 and the regulations thereunder.

The Plan provides that all elections to defer compensation (including, if applicable, designated Roth contributions under section 402A(c)(1)(B)) and any modifications made to such elections must be made prior to the beginning of the month in which the related compensation would have been paid in the absence of a deferral election.

The Plan provides for a maximum amount that may be deferred by a participant in any taxable year. It also provides for a catch-up computation for amounts deferred for one or more of the participant's last three taxable years ending before he or she attains normal retirement age under the Plan. The Plan also provides for the catch-up contributions for individuals age 50 or over under sections 414(v) and 457(e)(18). However, the Plan provides that a participant can only utilize one of the two catch-up contribution provisions during a single year. The amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457(c).

Under the Plan, a participant (upon severance of employment) or beneficiary may elect to have any portion of benefits deferred under the plan which constitute an eligible rollover distribution described in section 402(c)(4) of the Code paid directly to another eligible retirement plan described in section 402(c)(8)(B) such as an individual retirement account (IRA) in a direct rollover, with nonspouse beneficiaries subject to certain limitations set in section 402(c)(11).

With certain limitations, a participant or a beneficiary may elect the manner in which their deferred amounts will be distributed. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 401(a)(9) and 457(d) of the Code. However, a direct rollover of an eligible rollover distribution from a Roth contribution account may only be made to another designated Roth account under an applicable retirement plan described in section 408A and only to the extent the rollover is permitted under section 402(c).

The Plan provides that all amounts of compensation deferred under the Plan are to be held in trust (or a custodial account or annuity contract described in section 401(f)) for

the exclusive benefit of the participants and their beneficiaries. The rights of any participant or beneficiary to payments pursuant to the Plan are generally non-assignable and not subject to transfer, assignment, or attachment.

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 to the participant or beneficiary. Section 457(b) provides that the term "eligible deferred compensation plan" means a plan established and maintained by an eligible employer in which only individuals who perform service for the employer may be participants and which meet the deferral limitations described in section 457(c); which meets the distribution requirements described in section 457(d); which provides for deferral elections described in section 457(b)(4); and, in the case of a governmental plan, which requires the plan assets and income to be held in trust for the exclusive benefit of participants and beneficiaries as described in section 457(g).

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

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 1/2, 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 the regulations.

Section 457(e)(1)(A) defines an eligible employer to be a state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state.

Section 457(e)(16) provides that with respect to an eligible retirement plan established and maintained by a governmental employer, if 1) any portion of the balance to the credit of an employee in the plan is paid to him/her in an eligible rollover distribution, 2) the employee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and 3) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 457(g) 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)(3) provides that for purposes of section 457(g), custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f) which means such accounts and contracts would be treated as organizations exempt from taxation under section 501(a).

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

1. Assuming that all of the participating employers which join the Plan are instrumentalities or political subdivisions of State S, the Plan constitutes an eligible deferred compensation plan as defined in section 457(b) of the Code as amended under EGTRRA and subsequent statutes.
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 only 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. Any payment made from the Plan in the form of an eligible rollover distribution (as defined in section 402(c)(4)) is not includible in gross income in the year paid to the extent the payment is transferred to an eligible retirement plan (as defined in section 402(c)(8)(B)) in accordance with section 457(e)(16).
4. Assuming that it is a valid trust under State S law, the trust associated with the Plan will be treated as an organization exempt from taxation under section 501(a) in accordance with section 457(g)(2)(A).
5. Qualified distributions from the qualified Roth contribution program maintained pursuant to the Plan's provisions will not be included in income under section 402A(d)(1).

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than Plan of State S described above. If the Plan is significantly modified, this ruling may not necessarily remain applicable.

This ruling is directed only to the Plan and not to any other section 457(b) plan. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Cheryl Press  
Senior Counsel, Qualified Plans Branch 2  
(Employee Benefits)  
(Tax Exempt & Government Entities)

Enclosure  
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