



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200621033**

Release Date: 5/26/06

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Contact Person:

Identification Number:

Telephone Number:

UIL: 529.00-00

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Dear _____ :

This is in response to X's letter dated February 17, 2004, as supplemented, requesting a supplemental ruling to the rulings issued to X in a letter dated a (prior ruling letter). These rulings determined that the prepaid tuition plan ("the Program") described in the prior ruling letter constituted a qualified tuition program within the meaning of section 529 of the Internal Revenue Code. Except where noted, the terms used in this letter have the same meaning as in the prior ruling letter. The prior letter ruling describes the Prepaid Tuition Plan Agreement (referred to herein as the Program Agreement) as being between X, as Administrator, and the Participating Institutions, which establish the Program. The prior ruling letter states that the Program Documents provide for the establishment of a trust (called the Program Trust) to hold, for the exclusive benefit of designated beneficiaries, the funds received by the Program. These terms, "Program Agreement" and "Program Trust", will be used in the following paragraphs of this letter in the same way they are used in the prior ruling letter.

In X's request for a supplemental ruling, X has advised us that it proposes to amend the refund formula described in our prior ruling letter. Presently, X's Program provides for the calculation of Refund Value as the amount of the Certificate purchase price increased or decreased over the term the Certificate was outstanding by the net investment return realized upon investments held in the Program Trust, subject, however to the overall collar limitations of an annual positive 2% investment return and an annual negative 2% investment return. These terms are contained in the definition of "Refund Value" in the Program Agreement and Enrollment Agreement as follows:

"Refund Value" means with respect to a Tuition Certificate an amount determined by starting with the applicable Certificate Purchase Price and annually compounding its value for all program Years the Tuition Certificate was outstanding (but prorated for any period of

less than a full program year) by the actual Investment Return Percentage for all Program years the Tuition certificate was outstanding, provided that in no event shall such amount be:

1. greater than an amount determined by annually compounding the Certificate Purchase Price for all Program Years the Tuition Certificate was outstanding (but pro rated for any period of less than a full program year) by an assumed annual positive two percent (2%) Investment Return Percentage, or
2. less than an amount determined by annually compounding the Certificate Purchase Price for all Program Years the Tuition Certificate was outstanding (but pro rated for any period of less than a full program year) by an assumed annual negative two percent (2%) Investment Return Percentage.

X proposes to revise the definition of the Refund Value, as originally described above. X's proposed revision to the definition in the Plan Agreement and Enrollment Agreement is as follows:

"Refund Value" means with respect to a Tuition Certificate an amount determined by starting with the applicable Certificate Purchase Price and annually compounding its value for all program years the Tuition Certificate was outstanding (but pro rated for any period less than a full Program year) by the actual Investment Return Percentage for all Program Years the Tuition Certificate was outstanding, provided that in no event shall such amount be:

- (i) greater than an amount determined by annually compounding the Certificate Purchase Price for all Program Years the Tuition Certificate was outstanding (but pro rated for any period of less than a full Program year) by an assumed annual positive rate of return equal in absolute value to the Treasury Note Investment Return Percentage, or
- (ii) less than an amount determined by annually compounding the Certificate Purchase Price for all Program Years the Tuition Certificate was outstanding (but pro rated for any period of less than a full Program year) by an assumed annual negative rate of return equal in absolute value to the Treasury Note Investment Return Percentage.

In the event the Refund Value calculated using the actual Investment Return Percentage is greater than the amount determined pursuant to subsection (i) above, the Refund Value shall be deemed to be the amount calculated under subsection (i) above. In the event the Refund Value calculated using the actual Investment Return Percentage is less than the amount determined pursuant to subsection (ii) above, the Refund Value shall be deemed to be the amount calculated under subsection (ii) above.

X proposes to expand the definitions to the Program Agreement and Enrollment Agreement described in the prior ruling letter that would now include a definition for "Treasury Note Investment Return Percentage" as follows:

“Treasury Note Investment Return Percentage” means the mean between the high and low yield of the five-year Treasury Note, using the Constant Maturity Treasury rates as reported on the Federal Reserve Statistical Release (H.15), during each calendar year or portion thereof utilized in determining the Refund Value of a Tuition Certificate.”

Finally, for purposes of this ruling X has made the following representation:

The Program is being operated in the same manner described in the prior ruling letter and, except for the proposed amendments described above, there have been no changes in the purposes or operations of X or the Program from those described in the prior ruling letter.

Section 529(a) of the Code provides for the exemption from federal income tax of qualified tuition programs.

Section 529(b)(1) of the Code provides, in part, that the term “qualified tuition program” means a program established and maintained by a state or agency or instrumentality thereof or by one or more eligible educational institutions - -

(A) under which a person-

- (i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver of payment qualified higher education expenses of the beneficiary, . . . and

(B) which meets the other requirements of this subsection.

It is determined that the proposed revision of the Refund Value in the present Program Agreement and Enrollment Agreement, as set forth above, will have no adverse effect on the rulings contained in the prior ruling letter, and such rulings will continue in full force and effect. Specifically, we rule as follows:

1. The Program established by X continues to meet the requirements for exemption from federal income tax under section 529 of the Code.

This ruling is based on the facts and representations submitted. The ruling is not valid to the extent that the Program is not operated in the manner set forth above, or there are changes in the purposes or operations of X or the Program from that set forth above.

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

There are no final regulations for section 529 of the Code. Please be advised that the validity of this ruling may be affected by the issuance of final regulations as well as any transitional rules contained therein.

X must report the payment and distribution of all benefits under the Program for Federal income and state income tax purposes in accordance with the reporting rules applicable to qualified tuition programs under section 529 of the Code.

Because this letter could help resolve any future questions about the Program's exempt status, please keep a copy of this ruling in the organization's permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Pursuant to a power of attorney on file with this office, we are sending a copy of this ruling letter to X's authorized representative.

Sincerely,

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3