

Internal Revenue Service

Department of the Treasury

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Date:

June 23, 1999

EIN:

Sponsor =

Plan =

State =

This responds to your letter of December 14, 1998, regarding the continued qualification of the Sponsor's Plan under section 457 of the Internal Revenue Code.

The Sponsor is a municipal corporation and a political subdivision established under the State constitution to provide an integrated sewer system for the area.

Under the Plan, a participant may elect to defer compensation that would have been received for services rendered to Sponsor in any taxable year until death, separation from service with Sponsor, or until the occurrence of an unforeseeable emergency, or if the value of the participant's book account does not exceed \$3,500 and the participant has not contributed to the Plan within the last two years. Sponsor represents that its Plan has not adopted any provision permitting a loan to be made to its participants or their beneficiaries from its assets.

The participant's election to defer compensation under the Plan must be filed at least thirty days prior to the beginning of the quarter in which his or her salary reduction agreement becomes effective. A participant's compensation can be deferred into his/her section 457 plan account only if he or she had executed an agreement to defer such compensation prior to the month in which it was earned. The Plan provides for a maximum amount that may be deferred by a participant in any taxable year and also provides for a catch-up computation for amounts deferred for one or more of the

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participant's last three taxable years ending before he attains normal retirement age under the Plan. The amounts that may be deferred under the annual maximum limitation and the catch-up provision are within the limitations of section 457 including the section 457(c) coordinated deferral provision. Sponsor also represents that only the distribution options provided in the Plan documents will be offered to and used by its participants and beneficiaries.

With certain limitations, a participant may elect the manner in which his deferred amounts will be distributed. The election generally must be made prior to the date any such payment must commence to the participant. If the participant fails to make a timely election, distribution will commence at the time and in the manner set forth in the Plan. The Plan also includes a provision permitting a one-time additional election by a participant to further defer commencement of his distributions under the Plan after the first permissible payout date if distribution from his account has not already commenced. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of section 401(a)(9) of the Code.

Amounts of compensation deferred under the Plan are invested in a trust fund, which states that all amounts invested therein are held for the exclusive benefit of the participants and their beneficiaries. Also, all amounts deferred under the Plan must be transferred to that trust fund 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 attachment, garnishment, transfer or execution.

The Internal Revenue Service had previously issued rulings that the Plan met the requirements of section 457 of the Code. The Sponsor has since made several modifications to the Plan including the changes necessary to comply with the new section 457(g) exclusive benefit requirement enacted by the Small Business Jobs Protection Act.

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) provides that in the case of a participant in an eligible 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) prescribes that an eligible section 457 plan must meet the distribution requirements of section 457(d).

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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 $\frac{1}{2}$, (ii) when the participant is separated from service, or (iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations. However, section 401(a)(9)(C) generally allows plans to postpone the required beginning date until April 1 of the calendar year following the later of the calendar year in which the employee retires or in which he attains age 70 $\frac{1}{2}$.

Section 457(e)(10) provides that a participant is not required to include in gross income any portion of the entire amount payable to such participant solely due to the transfer of such portion from one eligible deferred compensation plan to another eligible deferred compensation plan.

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.

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

1. The Plan is an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986 as amended under sections 1447 and 1448 of the Small Business Job Protection Act of 1996, and complies with all requirements applicable to such plan effective for the plan year beginning on January 1, 1998.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible in the recipient's gross income for the taxable year or years in which amounts are paid or otherwise made available to an employee or beneficiary in accordance with the terms of the Plan.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the Plan described above. If the Plan is significantly modified, this ruling will not necessarily remain applicable. If the Plan adopts provisions permitting loans to its participants or their beneficiaries from its assets, this ruling will no longer be effective. This ruling is directed only to Sponsor and applies only to the Plan submitted on December 14, 1998

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as revised by the amendment submitted on June 23, 1999. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in this ruling. See section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely yours,

ROBERT D. PATCHELL
Assistant Chief, Branch 1
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosure:

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