Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date:
December 09, 2003

Legend

League =

Plan =

Country X =

Dear :

This is in reply to a request for a ruling on behalf of the , exempt from tax under section 501(c)(6) of the Internal Revenue Code ("Code"), concerning whether Plan would continue to meet the requirements of section 457(e)(12) of the Code, and continue to be excepted from section 457 of the Code, following the proposed amendment to the Plan as described below.

The Plan was established as of July 1, 1987, to provide certain benefits to general managers of the League's member teams ("Participants"). The Plan is a nonelective, nonqualified deferred compensation plan that provides compensation to Participants. The Plan provides for the payment of benefits in the amounts and at the times determined under the Plan. All Plan benefits are paid as annuities, except that benefits worth less than minimum amounts specified in the Plan are paid as lump sums. None of the Participants are employees of the League, and there are no individual variations or options under the Plan Participants in the Plan include citizens of the United States, as well as citizens of Country X.

By a ruling letter, PLR 9040030, dated July 6, 1990, the Service ruled, in part, that section 457 would not apply to compensation deferred under the Plan because the Plan met the requirements of section 457(e)(12) of the Code.

The League has been advised that under the tax laws of Country X, general managers of the clubs whose home facilities for playing League games are located in Country X may now be subject to the federal income tax of Country X on their vested benefits in the Plan as those benefits accrue rather than when the benefits are actually paid or made available to the general managers. Accordingly, the League proposes to amend the Plan to exclude all of the general managers whose home facilities for playing League games are located in Country X ("Amendment"). Specifically, the League proposes to amend the Plan to apply only to general managers whose home facilities for playing League games are located in the United States.

Under the Amendment, general managers whose clubs are located in Country X will no longer be eligible to participate in the Plan, but will be entitled to the benefits they have accrued under the Plan as of the date of the Amendment unless all of the current and former general managers of clubs located in County X with accrued benefits under the Plan consent in writing to give up those benefits.

Section 457 of the Code contains rules for the taxation of deferred compensation plans of state and local governments and tax-exempt organizations. If a plan complies with section 457, compensation deferred under the plan will not be included in income until the year is paid or otherwise made available.

Section 457(e)(12) of the Code exempts a plan from section 457 if it provides nonelective deferred compensation for services not performed as an employee. The compensation shall be treated as nonelective only if all individuals with the same relationship to the payor (other than those who have not satisfied any applicable initial service requirements) are covered under the same plan with no individual variations or options under the plan.

Section 1.457-2(k)(1) of the Income Tax Regulations provide that the term plan does not include (and section 457 and sections 1.457-2 through 1.457-11 of the regulations do not apply to) any nonelective deferred compensation under which all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship with the eligible employer are covered under the same plan with no individual variations or options under the plan as described in section 457(e)(12), but only to the extent the compensation is attributable to services performed as an independent contractor.

Under the proposed amendment, the Plan will apply to all Participants whose clubs have home facilities for playing League games that are located in the United

States. Thus, all individuals with the same relationship to the eligible employer will be covered under the same plan with no individual variations or options under the Plan. Accordingly, the proposed amendment to exclude general managers of clubs located in Country X who are subject to the federal income tax of Country X will not violate the requirements of section 457(e)(12), and section 457 will continue to be inapplicable to the deferred compensation under the Plan with respect to the general managers of clubs located in the United States.

This ruling concerns only the effect of the Amendment. No opinion is expressed with regard to the timing of inclusion in income of amounts deferred under the Plan. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent. Except as specifically stated above, no opinion is expressed on the federal tax consequences of the transaction described above under any other provision of the Code. Moreover, if the Plan or Trust Agreement is significantly amended, this ruling may no longer apply

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Robert D. Patchell
Chief, Branch 2
Office of Office of the Associate Chief Counsel
(Employee Benefits and Exempt Organizations)