Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200430013**
Release Date: 7/23/04
Index Number: 457.08-01

Person To Contact:
, ID No.
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Refer Reply To:
CC:TEGE:EB:QP2 – PLR-143670-03
Date:
April 09, 2004

In Re:

Legend

Federal Credit Union CU =

Executive E =

Dear

This responds to your letter of February 14, 2003 and subsequent correspondence, on behalf of Federal Credit Union CU, requesting a ruling concerning the application of section 457 of the Internal Revenue Code (the "Code") to the nonqualified deferred compensation plan that CU intends to implement for its Executive E in the near future. CU is represented to be a federal credit union that is a tax-exempt entity described in section 501(c)(1) of the Code. Your letter submitted a second ruling request that you subsequently withdrew. Hence, we do not deal with the second requested ruling in this letter.

CU intends to establish a non-qualified deferred compensation plan to provide deferred compensation benefits for its Executive E. Section 457 of the Internal Revenue Code provides rules regarding the taxation of deferred compensation plans of eligible employers. For this purpose, the term "eligible employer" is defined in section 457(e)(1)(A) as a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state. In addition, section 457(e)(1)(B) includes as an eligible employer "any other organization (other than a governmental unit) exempt from tax under" subtitle A of Title 1 of the Code. Federal government agencies or instrumentalities are not eligible employers described in section 457(e)(1)(A) or (B).

As stated above, CU is represented to be a federal credit union exempt from tax as an organization described in section 501(c)(1). Section 501(c)(1)(A) provides, in relevant part, that organizations exempt from federal income tax include any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation is exempt from federal income tax under such Act as amended and supplemented before July 18, 1984. The tax exemption for federal credit unions is derived from 12 U.S.C. § 1768 (last substantively amended in 1937) which provides, "The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial or local taxing authority . . . . " The Service has stated that "credit unions chartered under the Federal Credit Union Act are recognized as United States instrumentalities and are exempt under section 501(c)(1)." Rev. Rul. 69-283, 1969-1 C.B. 156.

Based upon the information presented and summarized above, we conclude as follows:

1. Section 457 of the Internal Revenue Code is inapplicable to the nonqualified deferred compensation plan that Federal Credit Union CU proposes to establish for the benefit of Executive E, because CU is a federal governmental instrumentality described in section 501(c)(1)(A) of the Code and does not constitute an eligible employer under section 457(e)(1)(A) or (B).

No opinion is expressed concerning the tax treatment of CU's nonqualified deferred compensation plan for E. This ruling is directed only to CU and E. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling 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 the ruling. See section 11.04 of Rev. Proc. 2004-1, 2004-1 I.R.B. 1, 46. However, when the criteria in section 11.06 of Rev. Proc. 2004-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely,

Robert D. Patchell
Branch Chief, Qualified Plans 2
Office of Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosure (1)

cc: