

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Date:
February 19, 2010

TY: Calendar Year

Legend

State S =

State Plan =

Dear :

This responds to your authorized representative's letter, on behalf of State S, requesting a ruling concerning the restated deferred compensation plan (the "State Plan") which State S intends to be an updated eligible deferred compensation plan for State S under section 457(b) of the Internal Revenue Code (the "Code"), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). The State Plan previously received a private letter ruling on August 11, 2006.

The State Plan is being amended to reflect changes made to the plan with respect to certain provisions of section 457 of the Code. In addition, amendments were made to the trust requirements of section 457(g).

Under the State Plan, the participant may elect to make deferrals into the State Plan from any accumulated sick pay or accumulated vacation pay that is payable in conjunction with the participant's severance from employment. The participant's election must be entered into before the first day of the month in which such amounts would otherwise be paid or made available, the amount must be paid by the later of 2 ½

months after the participant's severance date, or the end of the plan year in which the participant's severance occurred, and the amount must have otherwise been paid or usable by the participant prior to the severance if the participant had continued in the employment of State S.

The trustee may, at any time, on behalf of a participant who is actively employed or during the first twelve months following the retirement or severance from employment of any other participant who was formerly employed by State S, accept, administer, and distribute an amount that is either: (i) a direct plan-to-plan transfer of funds held under another eligible deferred compensation plan or trust described in section 457(b) of the Code for a participant that is not an eligible rollover distribution; or (ii) an eligible rollover distribution within the meaning of the State Plan from another eligible deferred compensation plan described in section 457(b).

Under the State Plan, severe financial hardships of the participant shall constitute unforeseeable emergencies (A) an illness or accident of the participant or the participant's spouse or dependents (as defined in section 152 of the Code without regard to sections 152(b)(1), (b)(2), and (d)(1)(B)); (B) loss of the participant's property due to casualty; or (C) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant (including, but not limited to, imminent foreclosure of or eviction from the participant's primary residence, and the need to pay burial or funeral expenses of a participant's deceased spouse or dependent).

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)(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 Treasury regulations.

Section 457(d)(2) requires a plan to meet the minimum distribution requirements of section 401(a)(9) as described in §§ 1.409(a)(9)-1 thru 1.401(a)(9)-9.

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

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)(2)(A) provides that a trust described in section 457(g)(1) shall be treated as an organization exempt from tax under section 501(a).

Based upon the information submitted and the representations made, we conclude as follows:

1. The State Plan, as amended and restated effective January 1, 2008, constitutes an eligible deferred compensation plan as defined in section 457(b) of the Code, as amended, and the regulations thereunder.
2. Amounts of compensation deferred in accordance with the terms of the State 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 the amounts are paid to a participant or beneficiary in accordance with the terms of the State Plan.
3. The trust associated with the State Plan satisfies all applicable requirements of section 457(g), and will be treated as an organization exempt from taxation under section 501(a).

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. If the State Plan is significantly modified, this ruling will not necessarily remain applicable.

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

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,

Cheryl E. Press
Senior Technician Reviewer, Qualified Plans
Branch 2 (Employee Benefits)
(Tax Exempt & Government Entities)

Enclosure

Copy for purposes of section 6110

cc: