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Person To Contact:
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Date:
August 30, 2018

In Re:

Taxpayer =
Plan 1 =
Plan 2 =
Plan 3 =
Plan 4 =
Plan 5 =
Plan 6 =
Plan 7 =
Plan 8 =
Plan 9 =
Transition Date =
State =

Dear :

This is in response to your request dated March 21, 2018, as supplemented by correspondence dated August 15, 2018, in which you request a private letter ruling regarding the Taxpayer's administration of certain of its retirement plans.

The following facts and representations have been submitted under penalties of perjury in support of the rulings requested:

Taxpayer was established in accordance with State law on . Taxpayer manages and administers several governmental defined benefit and defined contribution plans, including those covered by this ruling. The governing provisions for these plans are promulgated under State law. Taxpayer has established administrative rules in accordance with those statutory requirements. The plans at issue are required

by State law to satisfy the qualification requirements under section 401(a) of the Internal Revenue Code.

State established Plan 1 to pay retirement benefits for State employees and employees of its political subdivisions. Plan 2 was established to pay benefits to teachers and to supervisors of teachers in the public schools in State. Both plans consisted of a defined benefit pension benefit, funded by employer contributions, and a benefit paid from an annuity savings account (ASA), funded by employee contributions. Each member must contribute 3% of compensation (member contributions) to his or her ASA. Members are fully vested in their ASAs at all times.

Under the ASA structure, member contributions of an employee are paid to that member's account. Member contributions of an employee may be distributed to the member at retirement, either as a lump sum or as a lifetime annuity from the Plan of which it is a part. A member has the option of annuitizing the balance in the member's ASA to pay a lifetime benefit.. Prior to the Transition Date, the payment of the lifetime annuity from the ASA was guaranteed by the applicable Plan. Prior to

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the investments under the ASA consisted of either a fund under which a guaranteed rate of return is set by the Taxpayer (Guaranteed Fund), or a program of one or more funds under which the gain or loss in market value on the member's account is attributed to the member's account. The member directed the allocation of his or her ASA among the investment vehicles in 10% increments. As a result of these features, Taxpayer treated Plan 1 and its ASA portion and Plan 2 and its ASA portion as single defined benefit plan structures. Thus, Plan 1 and 2 tested benefits payable under the ASA based on the rules applicable to governmental defined benefit plans.

In addition, under Plan 1 and Plan 2, when an inactive member suspended membership and had not claimed the member's ASA within five years, the amount from the member's ASA was credited to the general retirement fund under the respective Plan. The member would no longer receive earnings or interest on the amount, but the member had the right to claim payment of the amount, regardless of whether it had been credited to the general retirement fund.

Further, under Plan 1 and Plan 2, members could purchase creditable service using funds in their ASAs. Under the single-plan structure, a transfer was made from a member's ASA to the employer account under that plan to complete the service purchase. The Plans also provided for a refund of the service purchase credit under certain circumstances, in which case, an amount equal to the refund would be transferred back from the employer account to the member's ASA.

State law authorizes the State to pick-up and pay all or a portion of a member's contribution under section 414(h)(2). Schools or political subdivisions may choose whether or not to pick up contributions. Schools and political subdivisions that choose

to pick up all or a portion of a member’s mandatory contributions must complete a resolution on a form provided by Taxpayer.

In , State added Plan 3 as an alternative to Plan 1, effective for employees first hired by the State on or after , and it became an option for political subdivisions to offer to their employees effective . Plan 3 functions as a defined contribution plan with employer contributions going to an ASA rather than to fund a defined benefit pension benefit. Although Plan 3 used the Plan 1 ASA investment and internal annuitization structure, the Guaranteed Fund is not available as an investment option, and all investment returns attributed to a member’s account are based on the gains or losses in market value on the member’s account. Benefits may be paid as either a lump sum, a direct rollover to another retirement plan, or an annuity paid from the plan. Because, like Plan 1, Plan 3 assumed the risk for the payment of the annuity lifetime benefits if the member chose that form of benefit, Taxpayer treated Plan 3 as a component of Plan 1 rather than a separate defined contribution plan. Thus, in Cycle C-1, Plan 1 and Plan 3 filed for a determination letter together as a single plan and received a favorable determination letter from the Internal Revenue Service (IRS) on .

Taxpayer then made the decision to outsource the annuity payments of all ASAs to a third-party annuity provider, effective as of the Transition Date. Thus, as of the Transition Date, none of the ASA structures under Plan 1, Plan 2, or Plan 3 internally guarantee lifetime annuity payments from the ASA.

Effective, , the Guaranteed Fund was eliminated as an investment option under Plan 1 and Plan 2, and a market-valued stable value fund was established that has preservation of capital as the primary investment objective. Taking into account the outsourcing of annuity payments from the ASA, as of the Transition Date, ASA benefits under Plan 1, Plan 2, and Plan 3 are based solely on the contributions to the account and any earnings/losses derived from the investments.

The Taxpayer treated Plan 3 as a separate plan from Plan 1 when it filed applications for determination letters in Cycle C-2. The IRS issued separate favorable determination letters to Plan 1 and Plan 3 on .

Also in , State established Plan 4 as an alternative to Plan 2. Plan 4 is a defined contribution plan that operates similarly to Plan 3.

As of the Transition Date, Plan 1 was split to create two plans: Plan 5, which includes the Plan 1 defined benefit structure, and Plan 6, which includes the Plan 1 ASAs. Plan 2 was split to create three plans: Plan 7 and Plan 8, which are two Plan 2 defined benefit structures, and Plan 9, which includes the Plan 2 ASAs. Plan 3 and Plan 4 remain separate plans. For all plans, the mandatory employee contribution is 3% of compensation. The pertinent details of these plans are as follows:

Plan 5 and Plan 6 (formerly parts of Plan 1) – An eligible State employee generally participates in both Plan 5 and Plan 6. Membership in both plans is for full-time employees of State not covered by another plan, for employees of those political subdivisions that elect to participate in the plans, and certain employees of Taxpayer. Certain employees may elect to participate in Plan 3 instead of Plans 5 and 6. Political subdivisions become participating employers by ordinance or resolution of the governing body that specifies the classifications of employees who will become members and what type of plan choices may be available for new employees. Plan 5 is a defined benefit pension plan that provides a monthly defined benefit pension that is funded by the employer (either State or a political subdivision). Plan 6 includes ASAs that consist of employee contributions plus the interest/earnings and losses on the investment of those contributions. Members contribute the 3% mandatory contribution to Plan 6, which is picked up by State. Political subdivisions may elect to pick up all or a portion of the contributions. Members are always fully vested in their accounts under Plan 6. As of the Transition Date, if an individual's membership is suspended, and the member does not withdraw the ASA, the funds will remain invested. The member may continue to change the investment allocation, and interest/earnings and losses continue to be credited to the member's ASA. In addition, as of the Transition Date, a member may purchase prior service credit under Plan 5 by transferring funds from his or her ASA account under Plan 6. If the member either terminates covered employment before satisfying the eligibility requirements necessary to receive a monthly pension under Plan 5, or if the member receives a monthly allowance for the same service under another tax-supported public employee retirement plan, the member is entitled to a refund of the funds used to purchase the service credit, and those funds are transferred back to the member's ASA in Plan 6.

Plan 3 – Membership in Plan 3 is available for full time employees of State hired on or after , in a position otherwise eligible for membership in Plan 5 and Plan 6. As of , political subdivisions may elect to provide this plan on either a mandatory basis or, for new hires, on an elective basis. To be eligible for membership in Plan 3, an individual must be either a full-time employee of a political subdivision electing to participate in the plan, or in a position eligible for membership in Plan 5 and Plan 6 but who elects to instead become a member of Plan 3. Eligible employees must elect membership in the plan within the first 60 days of their employment. If no election is made, a State employee defaults into membership in Plan 5 and Plan 6. The default plan for employees of a political subdivision depends on what the political subdivision selected in its participation resolution. Plan 3 provides an account that consists of employee contributions and employer contributions plus the interest/earnings and losses on the investment of those contributions. Members must contribute 3% of compensation, which is picked up by State. State is also required to make employer contributions that must be at least 3% of compensation. Political subdivisions may elect to pick up all or a portion of the contributions. A participating political subdivision determines the rate of employer contributions to Plan 3. Members are always fully

vested in their contributions. When a new employee of the State first becomes employed and is eligible to elect to participate in either Plan 5 and Plan 6 or Plan 3, employer contributions are automatically made on behalf of the employee to Plan 5 in a reserve account. If, within the 60-day election window, the employee elects to participate in Plan 3, the employer contributions are transferred to the employee's employer contribution account under Plan 3. Similar rules apply with respect to employees of political subdivisions that have elected to offer Plan 3 to their employees.

Plan 7, Plan 8 and Plan 9 (formerly parts of Plan 2) - Eligible public school teachers and administrators, as well as certain teachers at State institutions and other educational institutions, will participate in either: (1) both Plan 7 and Plan 9, (2) both Plan 8 and Plan 9, or (3) solely Plan 4. All teachers hired on or before

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are members of Plan 7, and those teachers hired after that date are members of Plan 8. All members of either Plan 7 or Plan 8 are also members of Plan 9. Plan 7 is a defined benefit pension plan that is funded by State appropriations as benefits are paid to members. Plan 8 is a second defined benefit pension plan funded by each respective school corporation based on actuarial analysis. Members of Plan 7 and Plan 8 are also members of Plan 9. Plan 9 includes ASAs that consist of employee contributions plus the interest/earnings and losses on the investment of those contributions. Employees must contribute 3% of their compensation into Plan 9, all or part of which the employing school may elect to pick up. Members are always fully vested in their accounts under Plan 9. The suspension of membership provisions and the service purchasing provisions that are described with respect to Plans 5 and 6 also apply to Plans 7, 8 and 9.

Plan 4 - Plan 4 is a defined contribution plan for teachers that is similar to Plan 3. All school corporations are required to offer Plan 4 to eligible employees. Plan 4 provides an account that consists of employee contributions and employer contributions, plus the interest/earnings and losses on the investment of those contributions. Employees must contribute 3% of compensation, and the school corporations must pick up the contributions. The employer contributions to the members accounts are determined by the Taxpayer, but cannot be less than 3% of compensation or greater than the normal cost of Plan 7 and Plan 8. Members are always fully vested in their employee contributions to the plan. Eligible employees have 60 days in which to elect to participate in the plan. If no election is made, the employee participates in Plan 8 and Plan 9.

Based on the facts and representations stated above, Taxpayer requests the following rulings:

1. Effective as of the Transition Date, for any member of Plan 6, Plan 3, Plan 9 or Plan 4 who has not yet commenced receipt of benefit payments, the member's ASA will be

treated as a separate contract for purposes of Taxpayer's tax reporting of basis recovery under section 72, as opposed to a single contract.

2. When an inactive member of Plan 6 or Plan 9, whose ASA has been suspended and credited to the pension assets under Plan 5 or Plan 7 or Plan 8, returns to active membership on or after , the transfer of assets previously credited to the applicable defined benefit plan to a restored defined contribution plan account for the member under Plan 6 or Plan 9 will not result in taxable income that would create a tax reporting obligation for Taxpayer with respect to the member.

3. The transfer to Plan 3 or Plan 4, as applicable, of employer contributions that are made to Plan 5 or Plan 7 or Plan 8 during the 60-day election window to participate in Plan 3 or Plan 4, for any employee that chooses to participate in Plan 3 or Plan 4 will not result in taxable income that would create a tax reporting obligation for Taxpayer with respect to the member.

4. When a member of Plan 5 or Plan 7 or Plan 8 uses his or her ASA account to purchase service credit under one of these defined benefit plans, Taxpayer may transfer the funds from the applicable ASA under Plan 6 to Plan 5 for the service purchase or from the applicable ASA under Plan 9 to Plan 7 or Plan 8 for the service purchase, and the member may transfer the funds back to Plan 6 or Plan 9, as applicable, in the event of the member's entitlement to a refund, and such transfers will not result in taxable income that would create a tax reporting obligation for Taxpayer with respect to the member.

5. As of the Transition Date, for any member of Plan 6, Plan 3, Plan 9, or Plan 4 who has not yet commenced receipt of benefit payments from his or her ASA account, Taxpayer will convert the member's ASA balance to an annual benefit (under section 415(b)(2)) and test that annual benefit under the section 415(b) limit, as applicable to governmental plans, and after the Transition Date all contributions to the member's ASA will be tested by Taxpayer under section 415(c).

6. Mandatory employee contributions under Plan 6, Plan 3, Plan 9, and Plan 4 will be treated by Taxpayer as picked-up contributions under section 414(h)(2).

Section 72 provides that, generally, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract. For amounts received as an annuity under a qualified retirement plan, section 72(d) applies. For amounts not received as an annuity under an annuity, endowment, or life insurance contract, section 72(e) applies.

Section 72(d)(2) provides that employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.

Section 1.72-2(a)(3)(i) of the Income Tax Regulations states that for purposes of applying section 72 to distributions and payments from an employees' plan, each separate program of the employer consisting of interrelated contributions and benefits shall be considered a single contract.

Revenue Ruling 67-213, 1967-2 CB 149, provides that if a participant's interest in a qualified plan is transferred from the trust forming part of that plan to the trust forming part of another qualified plan, there is no distribution of the participant's interest in the plan and no taxable income will be recognized by reason of such transfer.

Section 415 provides limits on benefits from defined benefit plans under section 415(b) and limits on contributions to defined contribution plans under section 415(c). Section 415(c) limits also apply to employee after-tax contributions to a defined benefit plan, subject to special service purchase rules and special rules regarding certain repayments of previously distributed benefits.

Section 414(h)(2) provides that, for purposes of section 414(h)(1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

Revenue Ruling 2006-43, 2006-35 I.R.B. 329, amplifying and modifying Rev. Rul. 81-35 1981-5 I.R.B. 11, 1981-1 C.B. 255, Rev. Rul. 81-36 1981-5 I.R.B. 12, 1981-1 C.B. 255, and Rev. Rul. 87-10 1987-5 I.R.B. 4, 1987-1 C.B. 136, describes the actions required for a state or political subdivision of a state, or an agency or instrumentality of either, to pick up employee contributions to a plan qualified under section 401(a) so that the contributions are treated as employer contributions pursuant to section 414(h)(2). Specifically, Rev. Rul. 2006-43 provides that a contribution to a qualified plan established by an eligible employer (that is, a governmental employer) will be treated as picked up by the employing unit under section 414(h)(2) if two conditions are satisfied:

> 1. First, the employing unit must specify that the contributions, although designated as employee contributions, are being paid by the employer. For this purpose, the employing unit must take formal action to provide that the contributions on behalf of a specific class of employees of the employing unit, although designated as employee contributions, will be paid by the employing unit in lieu of employee contributions. A person duly authorized to take such action with respect to the employing unit must take such action. The action must apply only prospectively and be evidenced by a contemporaneous written document (e.g., minutes of a meeting, a resolution, or ordinance).

2. Second, the pick-up arrangement must not permit a participating employee from and after the date of the pick-up to have a cash or deferred election right within the meaning of § 1.401(k)-1(a)(3) with respect to designated employee contributions. Thus, for example, no participating employee may be given the right to opt out of the pick-up arrangement described in section 414(h)(2), or to receive the contributed amounts directly instead of having them paid by the employing unit to the plan.

With regard to your first requested ruling, pursuant to your representations, prior to the Transition Date, the ASA structures under Plan 1 and Plan 2 were not separate contracts from the defined benefit structures under section 72(d) or § 1.72-2(a) for purposes of section 72(e), and each of Plan 1 and Plan 2 was considered to be a group of interrelated contributions and benefits based upon a number of factors. These factors included: (a) that a member could elect to receive an internally guaranteed annuity benefit from the ASAs; (b) if a member elected the annuity benefit under the ASA, annuity payments for the ASA and payments under Plan 1 or Plan 2 were made in the form of one periodic check; (c) amounts contributed to the ASA and invested in the Guaranteed Fund were credited with a stated rate of interest; and (d) earnings above or below this stated rate were placed in an Undistributed Income Reserve and could be used to fund other benefits under Plan 1 or Plan 2. However, after the Transition Date, significant changes were implemented in the structure of the Plans such that these factors are no longer applicable. These changes include that the Guaranteed Fund was eliminated as of , which means that all ASA earnings are market-based and earnings are no longer used to fund other benefits. In addition, as of the Transition Date, annuities relating to ASA balances will be paid by a third-party annuity provider instead of by the Taxpayer, so that internal annuities are no longer paid from ASA accounts. Thus, for Plan 6, and Plan 9 (formerly the ASA portions of Plan 1 and Plan 2, respectively), the risk associated with paying lifetime annuity payments has been transferred away from the Taxpayer. In addition, Plan 3, which never allowed for the Guaranteed Fund but included internal annuitization, also will no longer have internal annuitization as of the Transition Date.

The ASAs are treated as defined contribution plans under the new arrangement of Taxpayer's plans as of the Transition Date. Section 72(d)(2) provides that employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract. The change in the setup of these plans makes them separate contracts, and no longer interrelated. Therefore, Plan 3, Plan 6 and Plan 9 are now stand-alone defined contribution plans. Plan 4 was established as defined contribution plans and has always been treated as a separate contract. Accordingly, effective as of the Transition Date, for any member of Plan 6 or Plan 9 who has not yet commenced receipt of benefit payments, the member's ASA will be treated as a separate contract for purposes of Taxpayer's tax reporting of basis recovery under section 72, as opposed to being part of a single contract with the defined benefit plan structures under Plan 5 and Plans 7 and 8 respectively.

With regard to the second request, Taxpayer represents that, before the Transition Date, when an inactive member suspended participation in Plan 1 or Plan 2, his or her ASA funds were credited back to the respective defined benefit pension portion of the Plan, although the member always had the right to claim those funds, regardless of whether or not they were credited to the pension assets. For suspensions after , a suspended member's ASA remains in effect, and the member may continue to direct the investment of the assets in the account. Upon the Transition Date, the ASA portions of both Plan 1 and Plan 2 became separate defined contribution plans. Thus, for existing suspended ASAs, if the account had already been transferred to the defined benefit plan, it will remain in the plan. However, effective , upon an inactive member's return to active status, Taxpayer will restore the account and credit to the restored account the assets that had been previously credited to the pension assets of the applicable plan. The funds would be transferred without being made available to the member for distribution. Revenue Ruling 67-213 permits the transfer of plan assets from one plan to another, and as long as the funds are not available to the member, the transaction does not result in a reporting obligation to the Taxpayer. Therefore, when an inactive member of Plan 1 or Plan 2, whose ASA had been suspended and credited to the pension assets under the Plan 1 or Plan 2, returns to active status on or after , the transfer of assets previously credited to Plan 1 or Plan 2 to a restored defined contribution plan account for the member under Plan 6 or Plan 9 will not result in taxable income that would create a tax reporting obligation for Taxpayer with respect to the member.

With regard to the third request, Taxpayer represents that for any new eligible employee of State or a political subdivision who first becomes employed and is eligible to elect to participate in either Plans 5 and 6 or Plan 3, employer contributions are automatically made on behalf of the employee to Plan 5 in the employer reserve account. Similarly, for certain new eligible teachers who first become employed and are eligible to elect to participate in either Plan 8 and 9 or Plan 4, employer contributions are automatically made on behalf of the employee to Plan 8 in the employer reserve account. The employee has 60 days to make a written, irrevocable plan election. Taxpayer represents that the employee does not receive the contributions, and the funds are transferred from the reserve account to the plan the employee elects. Revenue Ruling 67-213 permits the transfer of plan assets from one plan to another, and as long as the funds are not available to the member, the transaction does not result in a reporting obligation to the Taxpayer. Therefore, the transfer to Plan 3 or Plan 4, as applicable, of employer contributions that are made to Plan 5 or Plan 8 during the 60-day window election period for Plan 3 or Plan 4 for any employee that chooses to participate in Plan 3 or Plan 4 will not result in taxable income that would create a tax reporting obligation for Taxpayer with respect to the member.

With regard to the fourth request, Taxpayer represents that, as of the Transition Date, the ASA structure that was included in Plan 1 became a separate plan (Plan 6), and the

ASA structure that was included under Plan 2 became a separate plan (Plan 9). However, Taxpayer will continue to allow members to purchase service credit into one of the defined benefit plans (Plan 5 and Plans 7 and 8) by transferring funds from his or her ASA. Also, if the member is entitled to a refund of the service purchase, the funds will be transferred back to his or her ASA account (Plan 6 or Plan 9). Revenue Ruling 67-213 allows for funds to be transferred from one qualified plan to another, and as long as the assets are not refunded to the member, there is no taxable income to the member, nor is there a reporting requirement on the part of the plan. Therefore, when a member of Plan 5, Plan 7 or Plan 8 has used his or her ASA to purchase service credit, and when the member subsequently becomes entitled to a refund of those funds, Taxpayer may transfer the funds from Plan 6 or Plan 9 back to Plan 5 or Plan 7 or Plan 8 (as applicable) for the service purchase, and back to Plan 6 or Plan 9 in the event of the member's entitlement to a refund, and such transfers will not result in taxable income that would create a tax reporting obligation for Taxpayer with respect to the member.

With regard to the fifth request, prior to the Transition date, all benefits under Plan 1 and Plan 2 were considered as paid under a single account, because the Guaranteed Fund was available as an investment option, and because a member could receive a lifetime annuity payment of his or her ASA account guaranteed by Plan 1 or Plan 2. The Plans therefore tested the benefits payable under the ASA based on the section 415(b) limit, as applicable to governmental defined benefit plans. As of the Transition Date, Plan 3 and Plan 4, and the ASA accounts formerly under Plan 1 and Plan 2 (i.e. Plan 6 and Plan 9) are separate defined contribution plans. Thus, section 415(c) applies to any new contributions to these accounts. Therefore, as of the Transition Date, for any member of Plan 1, Plan 2, Plan 3 or Plan 4 who has not yet commenced receipt of benefit payments from their ASA account, Taxpayer must convert that member’s ASA balance to an annual benefit (under section 415(b)(2)) and test that annual benefit under the section 415(b) limit, as applicable to governmental plans, and after the Transition Date, section 415(c) applies to all contributions to the member's ASA for any member of Plan 6, Plan 3, Plan 9, or Plan 4.

With regard to the sixth request, in order to pick-up the 3% mandatory employee contributions, the State, electing political subdivision, or electing school employer must take a formal action specifying that the contributions will be paid by the employer in lieu of employee contributions. Taxpayer represents in its submission that formal action was taken and was evidenced by contemporaneous written documentation via either statute or resolution by the legislative body of State, by the electing political subdivision of State or by the electing school. In addition, although a member may choose whether to be in Plans 5 and 6 or Plan 3, or whether to be in Plans 8 and 9 or Plan 4, no cash or deferred election arises from this election because Taxpayer represents that the mandatory employee contribution to each of the Plans is 3% of the employee’s compensation. Therefore, the mandatory employee contributions under the Plans 6, 3,

9, and 4 satisfy the conditions set forth in Rev. Rul. 2006-43 to be treated as picked-up by the employer under section 414(h)(2).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B. 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, section 11.05.

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.

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.

Sincerely,

Laura B. Warshawsky
Branch Chief
Qualified Plans Branch 1
Tax Exempt and Government Entities
Office of Associate Chief Counsel