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Legend

State S =

State Agency =

Plan =

Dear

This responds to your authorized representative's original letter and subsequent correspondence, on behalf of State S and its State Agency, requesting a ruling that State's S restated deferred compensation plan (the "Plan") is an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the "Code"), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and in subsequent legislation. The restated Plan has been adopted by State S which is represented to be an eligible governmental employer described in section 457(e)(1)(A) of the Code. The State Agency administers the Plan on behalf of State S.

Under the Plan, a participant, who must be an eligible employee of State S or one of its related agencies and instrumentalities, may elect to defer compensation within the Plan's limits that would have been received for services rendered to State S in any taxable year until death, severance from employment, attainment of age 70½, or until the occurrence of an unforeseeable emergency. The Plan also contains a provision allowing for an

elective in-service distribution of \$5,000.00 or less to be paid to a participant from his or her account in certain limited circumstances set forth thereunder and in section 457(e)(9)(A).

The Plan permits the State Agency to allow the Plan's participants to take loans from their section 457(b) plan accounts, subject to certain restrictions. Loans made under the Plan are subject to rules in the Plan and under § 1.457-6(f)(2) of the Income Tax Regulations, including provisions restricting the maximum amount and term of a plan loan.

A participant's election under the Plan to defer compensation not yet paid (including post-severance compensation paid within a limited period after severance from employment) must be filed prior to the beginning of the month in which the compensation to be deferred is paid or made available. 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 participant's last three taxable years ending before he attains normal retirement age under the Plan.

The amounts that may be deferred by a participant in the plan under the annual maximum limitation and the catch-up provisions are within the limitations of section 457(b), including the section 457(c) coordinated deferral provision.

The Plan also provides for the age 50 plus catch-up contributions described in sections 414(v) and 457(e)(18). However, the Plan provides that a participant can only utilize one of the two catch-up contribution provisions during a single year.

With certain limitations, a participant, beneficiary or alternate payee may elect the manner in which his/her deferred amounts will be distributed. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 401(a)(9) and 457(d) of the Code.

The Plan provides that amounts of compensation deferred thereunder are to be transferred to and held in a trust described in section 457(g)(1) for the exclusive benefit of the participants and their beneficiaries. All amounts deferred under the Plan must be transferred to the trust within a short period after such compensation would otherwise have been paid in compliance with § 1.457-8(a)(2)(ii) of the regulations. The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and not subject to transfer or alienation.

Under the Plan, a participant may elect to have any portion of an allowable distribution which constitutes an eligible rollover distribution described

in section 402(c)(4) of the Code paid directly to another eligible retirement plan described in section 402(c)(8)(B) such as an individual retirement account (IRA) in a direct rollover.

The Plan also provides, that a participant, prior to severance from employment, or a beneficiary or alternate payee may elect, pursuant to section 457(e)(17) and in accordance with the State Agency's rules, to transfer a portion or all of the amount in his/her section 457(b) plan account to a defined benefit governmental plan, described in section 414(d) of the Code, that accepts such transfers, to purchase permissive service credit described in section 415(n)(3)(A) of the Code or make a repayment to which section 415 does not apply under section 415(k)(3) pursuant to the terms of such transferee plan.

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

Section 457(e)(16) provides that with respect to an eligible retirement plan established and maintained by a governmental employer, if 1) any portion of the balance to the credit of an employee in the plan is paid to him/her in an

eligible rollover, 2) the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and 3) in the case of a distribution of non-monetary property, the amount so transferred consists of the property distribution, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 457(e)(17) provides that no amount shall be includible in gross income due to a direct trustee-to-trustee transfer to a defined benefit governmental plan described in section 414(d) if such transfer is a) to purchase permissive service credit described in section 415(n)(3)(A) in the governmental plan, or b) to make a repayment to which section 415 does not apply under section 415(k)(3). Section 1.457-10(b)(8)(i) of the Income Tax Regulations clarifies that such a transfer may be made before severance from employment.

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 and representations provided, we conclude as follows:

1. The restated Plan of State S constitutes an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986, as amended under EGTRRA and subsequent legislation.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(A) of the Code in the recipient's gross income only for the taxable year or years in which amounts are paid to a participant or beneficiary in accordance with the terms of the Plan.
3. The Trust under the Plan, established by State S, satisfies the requirement of section 457(g) of the Code, and the Trust shall be treated as an organization exempt from taxation under section 501(a) of the Code.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the above-

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

This ruling is directed only to the Plan and not to any other section 457(b) plan, and it applies only if State S adopts the revised Plan submitted on December 3, 2009, amending the restated Plan originally submitted on August 20, 2009. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Cheryl Press  
Senior Counsel, Qualified Plans Branch 2  
(Employee Benefits)  
(Tax Exempt & Government Entities)

Enclosure (1)