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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
January 08, 2018

Legend:

Plan =
State A =
Board B =

Dear :

This letter responds to your authorized representative's letter dated July 11, 2017, and subsequent correspondence dated November 20, 2017, requesting a ruling concerning the Plan, which Board B intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code (Code), as amended under the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 and subsequent legislation, and the regulations thereunder.

The following facts and representations have been submitted under penalties of perjury in support of your request:

The Plan is a nonqualified deferred compensation plan and related trust adopted by Board B, for the benefit of the employees of State A or any of its political subdivisions. It is represented that State A or any of its political subdivisions are eligible employers within the meaning of section 457(e)(1)(A).

The Plan provides that an employer may elect to establish an eligible automatic contribution arrangement (EACA), described in section 414(w)(3). Under this provision, an employee is deemed to have elected to participate in the Plan and consents to the deferral by the employer of a uniform percentage of compensation specified by Board B for any payroll period for which a participation agreement is not in effect. A participant may elect a different deferral amount per payroll period, including zero, by entering into

a participation agreement. The opt-out period shall be no less than 30 days and no more than 90 days.

An employee may also become a participant by executing a participation agreement under procedures established by the State A Retirement System prior to the beginning of the month in which the deferral is to become effective.

The Plan provides for a maximum amount that may be deferred by a participant in any taxable year. It also provides for a catch-up contribution for amounts deferred for one or more of the participant's last three taxable years ending before he or she attains normal retirement age under the Plan. In addition, the Plan provides for age fifty-plus catch-up contributions described in section 457(e)(18). The amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457(c).

With certain limitations, a participant or beneficiary may elect the manner in which his or 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).

Upon separation from service, a participant's account will be paid in accordance with the payment option elected by the participant. Benefits under the Plan will commence no later than the later of: April 1 of the year following the calendar year in which the participant attains age 70 ½; or April 1 of the year following the calendar year in which the participant has a separation from service. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of section 401(a)(9).

Under the Plan, a participant (upon severance from employment) or beneficiary may elect to have any portion of benefits deferred under the Plan that constitutes an eligible rollover distribution described in section 402(c)(4) 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, with nonspouse beneficiaries subject to certain limitations set forth in section 402(c)(11).

The Plan provides for a distribution due to an unforeseeable emergency that is a severe financial hardship resulting from extraordinary and unforeseeable circumstances beyond the control of the participant under section 457(d)(2) and the regulations thereunder.

The Plan provides for acceptance of transfers of a participant's account balance from another section 457(b) eligible deferred compensation plan. The Plan provides for permissive plan to plan transfers or rollovers of all or a portion of a participant's account to another section 457(b) eligible deferred compensation plan if the participant has terminated service and is a participant under the other eligible plan. The Plan provides that amounts of compensation deferred under the Plan are to be promptly remitted to

and invested in a trust as described in section 457(g) for the exclusive benefit of the participants and their beneficiaries.

The plan provides for deemed traditional individual retirement accounts (IRAs) and deemed Roth IRA accounts. The deemed IRA assets will be held, in trust, separately from the general trust assets of the Plan. The deemed IRAs will be held in separate subaccounts for each participant and any deemed IRA contributions, including earnings, will be separately accounted for by the Plan.

Section 408(q) provides that if a qualified employer plan allows employees to make voluntary employee contributions to a separate account or annuity under the plan, and under the terms of such plan, the account or annuity meets the applicable requirements of section 408 (relating to IRAs) or section 408A (relating to Roth IRAs), then such separate account or annuity shall be treated the same as an IRA or Roth IRA and not as a qualified employer plan. Section 408(q)(2) provides that eligible deferred compensation plans are qualified employer plans. Section 1.408(q)-1(f)(2) provides that deemed IRAs that are individual retirement accounts may be held in separate individual trusts, a single trust separate from a trust maintained by the qualified employer plan, or in a single trust that includes the qualified employer plan.

Section 414(w)(1) provides that if an EACA allows an employee to make permissible withdrawals, the amount of any such withdrawal is includible in the gross income of the employee for the taxable year of the employee in which the distribution is made, no tax will be imposed under section 72(t) with respect to the distribution, and the arrangement will not be treated as violating any restriction, under the Code, on distributions by reason of allowing the withdrawal.

Section 414(w)(2) provides that a permissible withdrawal is any withdrawal from an EACA which is made pursuant to an election by an employee and consists of elective contributions described in section 414(w)(3)(B) (and earnings attributable thereto).

Section 414(w)(3) provides that an EACA means an arrangement under an applicable employer plan under which a participant may elect to have the employer make payments as contributions: (1) under the plan on behalf of the participant or to the participant directly in cash, (2) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and (3) meets the notice requirements of section 414(w)(4).

Section 414(w)(4) provides that the administrator of a plan that contains an EACA shall, within a reasonable period before each plan year, give each employee to whom the

EACA applies for such plan year notice of the employee's rights and obligations under the EACA.

Section 414(w)(5)(C) provides that the term "applicable employer plan" means an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).

Section 457 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) 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) provides that the term "eligible deferred compensation plan" means a plan established and maintained by an eligible employer in which only individuals who perform service for the employer may be participants and which meet the deferral limitations described in section 457(c); which meets the distribution requirements described in section 457(d); which provides for deferral elections described in section 457(b)(4); and, in the case of a governmental plan, which requires the plan assets and income to be held in trust for the exclusive benefit of participants and beneficiaries as described in section 457(g).

Section 457(b)(2) provides the basic limits on the amount of eligible annual deferrals. However, a catch-up amount described in section 457(b)(3) may be added to this amount for participants that are within three years of the normal retirement age or, for participants age 50 or older, a catch-up amount may be added as described in section 457(e)(18). A participant eligible for both catch-up provisions is entitled to use the higher limit of the two. The total annual eligible deferral amount is limited by section 457(c). Coordination of the basic limits and the catch-up limits is described in section 1.457-4(c).

Section 457(b)(4) provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month. An eligible plan may provide that if a participant enters into an agreement providing for deferral by salary reduction under the plan, the agreement will remain in effect until the participant revokes or alters the terms of the agreement.

Section 1.457-4(c)(3)(v)(A) provides that a plan may define the normal retirement age for purposes of the last-three-years catch-up provision as any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the State or tax-exempt entity (or a money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), immediate retirement benefits

without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70 ½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. For purposes of the three-year catch-up provision an entity sponsoring more than one eligible plan may not permit a participant to have more than one normal retirement age under the eligible plans it sponsors.

Section 1.457-5 provides that the eligible deferral amount limitation of section 457(c) is applied to all eligible plans in which a participant participates in a tax year and is determined on an aggregate basis. If a participant has annual deferrals under more than one eligible plan and the applicable catch-up amount is not the same for each such eligible plan for the taxable year, section 457(c) is applied using the catch-up amount under whichever plan has the largest catch-up amount applicable to the participant. To the extent that the combined annual deferral amount exceeds the maximum deferral limitation, the amount is treated as an excess deferral under section 1.457-4(e). For purposes of determining whether there is an excess deferral resulting from a failure of a plan to apply the deferral limitations, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan (without regard to any differences in funding).

Section 457(d)(1)(A) provides that amounts distributed under an eligible plan will not be made available to participants or beneficiaries earlier than (i) the calendar year in which the participant attains age 70 ½, (ii) when the participant has a severance from employment with the employer, or (iii) when the participant is faced with an unforeseeable emergency.

Section 1.457-6(c)(2) provides the requirements for an unforeseeable emergency distribution. An unforeseeable emergency must be defined in the plan as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent; loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary.

Whether a participant or beneficiary is faced with an unforeseeable emergency is determined based on the relevant facts and circumstances of each case. However, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan. Further, distributions because of an unforeseeable emergency must be limited to the amount reasonably necessary to

satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

Section 457(d)(2) requires a plan to meet the minimum distribution requirements of section 401(a)(9). These requirements are described in sections 1.401(a)(9)-1 through 1.401(a)(9)-9.

Section 457(d)(3) provides that a governmental plan will not fail to meet the distribution requirements if it provides for in-service distributions of a limited-dollar amount which meet requirements of section 457(e)(9)(A) and section 1.457-6(e). Section 1.457-6(e) is satisfied if the participant's total amount deferred (the participant's total account balance) which is not attributable to rollover contributions is not in excess of the dollar limit under section 411(a)(11)(A) (i.e., $5,000 adjusted for inflation), no amount has been deferred under the plan by or for the participant during the two-year period ending on the date of the distribution, and there has been no prior distribution under the plan to the participant of this kind.

Section 457(e)(1) provides that the term "eligible employer" means a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State, and any other organization (other than a governmental unit) exempt from income tax.

Section 457(e)(10) provides that a participant shall not be required to include in gross income any portion of the entire amount payable to such participant solely by reason of the transfer of such portion from one section 457(b) eligible deferred compensation plan to another section 457(b) eligible deferred compensation plan. Section 1.457-10(b)(1) provides that an eligible government plan may transfer amounts to, and receive amounts from, an eligible government plan if certain conditions are met.

With regard to transfers from an eligible governmental plan to another eligible governmental plan of the same employer, section 1.457-10(b)(4) provides that a transfer from an eligible governmental plan to another eligible governmental plan is permitted if the following conditions are met: (i) the transfer is from an eligible governmental plan to another eligible governmental plan of the same employer; (ii) the transferor plan provides for transfers; (iii) the receiving plan provides for the receipt of transfers; (iv) the participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and (v) the participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the participant or beneficiary is performing services for the entity maintaining the receiving plan.

Section 457(e)(16) provides that with respect to an eligible retirement plan established and maintained by a governmental employer, if (i) any portion of the balance to the credit of an employee in the plan is paid to him/her in an eligible rollover distribution within the meaning of section 402(c)(4), (ii) the employee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and (iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(11) provides that nonspousal beneficiaries may elect to have an eligible rollover distribution paid directly to an inherited IRA.

Under section 1.457-10(e), an eligible governmental plan that permits eligible rollover distributions made from another eligible retirement plan to be paid into the eligible governmental plan is required to provide that it will separately account for any eligible rollover distributions it receives. Amounts contributed to an eligible governmental plan as eligible rollover distributions are not taken into account for purposes of the annual limit on annual deferrals by a participant but are otherwise treated in the same manner as amounts deferred under the plan.

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

1. The Plan is an eligible deferred compensation plan as defined in section 457(b) and the regulations thereunder.

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) in the recipient's gross income 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. Amounts distributed from the Plan in an eligible rollover distribution (within the meaning of section 402(c)(4)), shall not be includible in gross income for the taxable year in which paid to an eligible retirement plan (within the meaning of section 402(c)(8)(B)), as provided in section 457(e)(16).

4. The trust established as part of the Plan meets the requirements of section 457(g)(1) and will be treated as an organization exempt from tax under section 501(a).

5. Maintaining an EACA (within the meaning of section 414(w)(3)) through the Plan, under which the participant is treated as having elected to have the employer make contributions in an amount equal to a uniform percentage of compensation provided under the Plan until the participant specifically elects not to have contributions made (or specifically elects to have contributions made at a different percentage), does not cause the Plan to fail to satisfy section 457(b)(4) and section 1.457-4(b). Permissible withdrawals (within the meaning of section 414(w)(2)) made from the Plan are includible in the gross income of the employee for the taxable year of the employee in which the distribution is made. Permissible withdrawals from the Plan do not violate the distribution restrictions of sections 457(b)(5) and 457(d)(1)(A).

6. The deemed IRA under the Plan constitutes a valid deemed IRA program in accordance with section 408(q), including the provisions related to a deemed Roth IRA.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter or whether the Plan is a governmental plan within the meaning of section 414(d). If the Plan is significantly modified, this ruling will not necessarily remain applicable.

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, 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.

This letter ruling is directed only to the taxpayer who requested 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,

Cheryl E. Press
Senior Counsel
Qualified Plans Branch 4
(Employee Benefits)
(Tax Exempt & Government Entities)

cc: