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Date: April 12, 1999

State S

Plan Trustees EIN =

Dear:

This responds to your letter of December 4, 1998 and subsequent correspondence, on behalf of the trustees of State S's Public Employees Deferred Compensation Plan, requesting a ruling concerning the proposed amended and restated deferred compensation plan (the "Plan") which S intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986. The Plan was restated to comply with the amendments to section 457 enacted by the Small Business Job Protection Act of 1996 (SBJPA). S plans to make the plan available for adoption by other political subdivisions that are eligible governmental entities described in section 457(e)(1)(A) and that are located within State S.

Under the Plan an employee of S or a participating political subdivision thereof, may elect to defer compensation he or she would have received for services rendered to the governmental employer until death, separation from service with the employer (including separation from service due to disability), or until the occurrence of an unforeseeable emergency. Any employee employed by S or another participating employer may participate in this Plan by signing a participation agreement. The Plan also includes a provision permitting an 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 does not provide that a loan may be made from assets held by the Plan to any participant or beneficiary under the Plan.

The participant's election to defer compensation under the Plan must be filed prior to the beginning of the month in which the compensation to be deferred is earned. 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 under the annual maximum limitation and the catch-up provision are within the limitations of section 457 including the section 457(c) coordinated deferral provision.

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With certain limitations, a participant may elect the manner in which his or her deferred amounts will be distributed. A distribution election generally must be made prior to the date any such payment must commence to the participant. The Plan also includes a provision permitting a one-time additional election by a participant to further defer commencement of his distributions under the Plan after the first permissible payout date if distribution from his account had not already commenced. If the participant fails to make a timely election, or if the participant's account balance upon separation from service is under the generally applicable de-minimis level established by the plan administrator, distribution will commence at the time and in the manner set forth in the Plan. 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 further provides that, in accordance with section 457(g) of the Code, the trustee of its assets must hold all the section 457 plan's assets for the exclusive benefit of the participants and their beneficiaries, and that all amounts deferred under the Plan must be transferred to the trust within an administratively reasonable time period. The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and nontransferable.

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) of the Code provides that in the case of a participant in an eligible 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 or otherwise made available 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(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.

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Provided that all participating employers are eligible governmental employers described in section 457(e)(1)(A) and located in State S, based upon the provisions of the revised plan summarized above, and the documents presented, we conclude as follows:

1. The restated Deferred Compensation Plan adopted by State S constitutes an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986. Eligible governmental employers within State S that adopt this Plan will have adopted an eligible deferred compensation plan as defined in section 457(b).
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible in gross income for the taxable year or years in which amounts are paid or otherwise made available to a participant or beneficiary in accordance with the terms of the Plan.
3. The trust established under S's section 457(b) Plan is treated under section 457(g) as exempt from federal income taxation pursuant to section 501(a).

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than S's Plan described above. In addition, this ruling applies only to deferrals made after the date this ruling was issued. If either the Plan or the trust document associated with the Plan is significantly modified, this ruling will not necessarily remain applicable. This ruling is directed only to State S and the participating eligible employers and to the participants and beneficiaries of its Plan and applies only to the trust document submitted on December 4, 1998 and to the revised and restated Plan submitted on April 6, 1999. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

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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 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely yours,

ROBERT D. PATCHELL  
Assistant Chief, Branch 1  
Office of the Associate  
Chief Counsel  
(Employee Benefits and  
Exempt Organizations)

Enclosure:

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