

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP:2-PLR-111467-03
Date:
July 29, 2003

Employer=

EIN =
Plan =

Dear _____ :

This is in response to your letter dated November 4, 2002 and subsequent correspondence on behalf of the above-referenced Employer requesting a ruling on the tax consequences of Employer's deferred compensation plan.

Employer represents that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. The Plan will be offered to a select group of management and highly compensated employees as an additional opportunity to defer compensation for retirement.

The Plan is intended to be an eligible deferred compensation plan described in section 457(b) of the Code. Under the terms of the Plan, participants may annually defer compensation up to the applicable dollar amount so long as the agreement to defer is entered into before the month for which compensation is deferred. The Plan also provides that pursuant to section 457(b)(3) of the Code a participant may make deferrals in excess of the applicable dollar amount during the participant's three taxable years ending before attainment of normal retirement age. The Plan permits participants to specify a normal retirement age within the range of ages 65 to 70 ½. The Plan does not provide for employer contributions.

Distributions of a participant's account will be made no earlier than upon a severance from employment, upon an unforeseeable emergency, upon the participant's reaching age 70 ½, or in accordance with the small account balance provision of the Plan; but in all cases distributions will be made in accordance with section 401(a)(9) of the Code. The plan provides that within sixty days of a severance from employment the participant must make an initial election as to the time and form of distribution. In the

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absence of such an election, a participant's account will be deemed to have been made available as of the sixty first day after the occurrence of the distributable event. However, participants are permitted to make an additional one-time election to defer commencement and/or to change the form of distribution so long as these additional elections are made at least thirty days prior to the date distributions are to commence. If a distribution is made on account of an unforeseeable emergency, only an amount sufficient to meet the emergency will be distributed. The Plan also provides that either the participant or the Plan Administrator may initiate an in-service distribution of a small amount. Such in service distributions will be made only if: (1) the account balance, including gains and losses, but excluding any transfer amounts, does not exceed \$5,000; (2) the participant has not made any deferral under the Plan during the two year period ending on the date of distribution; and the participant has not already received a similar in-service distribution.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan (as described in section 457(b)).

Section 457(a) of the Code provides that 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 amount 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.

Treas. Reg. sec. 1.457-1(b)(2) states that amounts deferred (including amounts previously deferred) under an eligible plan will not be considered made available to the participant solely because the participant is permitted to choose among various investment modes under the Plan for the investment of such amounts whether before or after any payments have commenced under the plan.

Section 457(e)(10) states 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 eligible deferred compensation plan to another eligible deferred compensation plan.

Based upon the provisions of the Plan summarized above, we conclude as follows:

1. The Plan constitutes an eligible deferred compensation plan as described in section 457(b) of the Code.
2. Amounts of compensation deferred pursuant to the Plan, including any income attributable to the deferred compensation, will be includible in the gross income of the recipient only for the taxable year or years in which amounts are paid or otherwise made available to a participant or beneficiary under the Plan.

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Except as specifically ruled upon above, no opinion is expressed as to the federal income tax consequences of the Plan under any other provision of the Code. If the Plan is significantly modified, this ruling will not necessarily remain applicable.

This ruling is directed only to Employer and applies only to the plan submitted by a transmittal letter dated November 4, 2002, as revised by amendments submitted on July 2, 2003. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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 conclusions in this ruling. See section 12.04 of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, 44. However, when the criteria in section 12.06 of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, 45, are satisfied, a ruling is not revoked or modified except in rare or unusual circumstances.

Sincerely yours,

ROBERT D. PATCHELL
Chief, Qualified Plans
Branch two
Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt and Government
Entities)

Enclosure

Copy of letter

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