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Person To Contact:
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Telephone Number:

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Date:
April 18, 2016

Legend

School District =
State S =
Plan =

Dear

This responds to your letter of August 25, 2015, requesting a letter ruling regarding the Plan, which the School District intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the Code), as amended under the Tax Relief Reconciliation Act of 2001 (EGTTRA) and subsequent legislation, and the regulations.

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 adopted by the School District of State S for the benefit of the employees of the School District. It is represented that the School District is an eligible employer within the meaning of section 457(e)(1)(A).

Under the Plan, an employee becomes a participant by executing a deferral agreement to defer compensation into the Plan. The election must be made prior to the beginning of the month in which the employee’s compensation is paid or made available.

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) of the Code. 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 a beneficiary may elect the manner in which their 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 allows participants and beneficiaries to take loans from their plan accounts, subject to certain restrictions. Loans made under the Plan are subject to rules in the Plan, section 72(p) and section 1.457-6(f)(2) of the Income Tax Regulations (the regulations), including provisions restricting the maximum amount and term of a plan loan.

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) of the Code.

Under the Plan, a participant (upon severance of employment) or beneficiary may elect to have any portion of benefits deferred under the plan which constitute 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, with nonspouse beneficiaries subject to certain limitations set in section 402(c)(11).

With certain limitations, a participant or a beneficiary may elect the manner in which their 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. However, a direct rollover of an eligible rollover distribution from a Roth contribution account may only be made to another designated Roth account under an applicable retirement plan described in section 408A and only to the extent the rollover is permitted under section 402(c).

The Plan also 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) of the Code and the regulations thereunder.

The Plan provides for acceptance of transfers of a participant's account balance from another 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 eligible governmental plan if the participant has terminated service and is a participant of 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) of the Code for the exclusive benefit of the participants and their beneficiaries.

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) 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).

Under section 402A(a) of the Code, applicable retirement plans may include a qualified Roth contribution program. Section 402A(e)(1) provides that eligible governmental deferred compensation plans are applicable retirement plans. Section 402A(a)(1) provides that elective deferrals of compensation which are designated Roth contributions under qualified Roth contribution programs are not excluded from income in the year of deferral. Section 402A(d)(1) provides that qualified distributions from designated Roth accounts are not includable in gross income.

Section 457(b)(4) of the Code 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 457(b)(2) of the Code 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) of the regulations.

Section 1.457-4(c)(3)(v)(A) of the regulations 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 seventy and a half. 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 1.457-4(c)(3)(v)(B) provides a special exception for qualified police and firefighters to retire as early as age forty for purposes of the three-year catch-up provision.

Section 1.457-5 of the regulations provides that the eligible-deferral amount limitation of section 457(c) of the Code 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) of the Code 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 1/2, (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) of the regulations provides the requirements for a 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) of the Code 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 of the regulations.

Section 457(e)(1) of the Code 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) of the Code 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 eligible deferred compensation plan to another eligible deferred compensation plan. Section 1.457-10(b)(1) of the regulations 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) of the regulations 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) of the Code 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, (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.

Under section 1.457-10(e) of the regulations, 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 1.402(c)-2(b) provides that a distributee other than the employee or the employee's surviving spouse (or a spouse or former spouse who is an alternate payee under a qualified domestic relations order) is not permitted to roll over distributions.

Section 457(e)(17) of the Code provides that no amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan or a repayment to which section 415(k)(3) does not apply.

Section 457(g) of the Code 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).

Section 1.457-7(b)(3) of the regulations provides that, in accordance with section 72(p) of the Code, the amount of any loan from an eligible governmental plan to a participant or beneficiary is generally treated as having been received as a plan distribution under section 72(p)(1) except to the extent set forth in section 72(p)(2) and section 1.72(p)(1) (relating to loans that do not exceed a maximum amount and that are repayable in accordance with certain terms). Thus, except to the extent a loan from a governmental section 457(b) plan satisfies sections 72(p)(2), 1.72(p)-1, and 1.457-6(f)(2), any amount loaned from an eligible governmental plan to a participant or beneficiary is includible in the gross income of the borrower for the taxable year when the loan is made. If a loan made under the Plan meets the requirements established under the Plan, the loan would satisfy the requirements of sections 72(p)(2), 1.72(p)-1, and 1.457-6(f)(2), and thus would not be treated as a taxable distribution under section 72(p)(1) solely because the loan was made.

Based upon 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) of the Code as amended under EGTTRA and subsequent legislation, and the regulations.

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 for the taxable year or years in which amounts are paid to a participant or beneficiary pursuant to the provisions of the Plan unless the participant elects to have the deferrals made as after-tax deferrals to a designated Roth account. If the deferrals are made to designated Roth accounts in compliance with the Small Business Jobs Act of 2010 or are later converted through in-plan conversions as after tax deferrals, the deferrals will be taxed in the taxable year or years in which they were deferred or converted.

3. Provided that loans from the Plan are made in accordance with the Plan's provisions, the making of such loans will not be treated as distributions subject to current taxation under section 72(p)(1) of the Code.

4. Any payment made from the Plan in the form of an eligible rollover distribution (as defined in section 402(c)(4) of the Code), including a direct rollover, will not be includible in gross income in the year paid to the extent the payment is transferred to an eligible retirement plan (as defined in section 402(c)(8)(B)) within 60 days, including any property distributed from the Plan, in accordance with section 457(e)(16).

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

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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations; to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 59. However, when the criteria in section 11.06 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 60, are satisfied, a ruling will generally not be revoked or modified retroactively.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

// Cheryl E. Press //

Cheryl E. Press
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(Employee Benefits)
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