

Internal Revenue Service

Department of the Treasury
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Mr. F. David Loomis
State of Colorado, Department of Personnel
& Administration
457 Deferred Compensation Plan
Administrator
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PLR-128248-04
Date: September 26, 2005

LEGEND:

State A: State of Colorado

EIN: 84-0644739

The Plan: The State of Colorado Deferred Compensation Plan

Dear Mr. Loomis:

This responds to your letter dated April 30, 2004, requesting a ruling concerning the amended and restated Plan and the Plan amendments adopted July 29, 2005. State A intends the Plan to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the Code). State A is represented to be a state government which is an eligible employer described in Code section 457(e)(1)(A).

Under the Plan, an eligible employee becomes a plan participant by executing an agreement which authorizes State A to reduce the employee's compensation by a certain amount and to contribute the amount into an investment account established on behalf of the participant. No portion of the compensation of an employee shall be deferred for any calendar month unless the employee enters into the agreement to do so prior to the beginning of the month.

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. In addition, the Plan also provides for the age 50 plus catch-up contributions described in Code section 414(v). However, the Plan provides that a participant can only utilize one of these two catch-up contribution provisions

during a single year. The amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of Code section 457(c).

With certain limitations, a participant may elect the manner in which his or her deferred amounts will be distributed. If the participant fails to make a timely election by the date set in the Plan, 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 Code sections 457(d)(1) and 401(a)(9).

The Plan includes a provision for 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 specified in the Plan and in Code section 457(e)(9)(A). The Plan also includes a loan program to provide loans to the participants from assets held by the Plan as described in Code section 457(b). Loans made under the Plan are subject to the rules in section 1.457-6(f)(2) of the Income Tax Regulations.

The Plan provides that amounts of compensation deferred thereunder are to be transferred to and invested in a trust described in Code § 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 an administratively reasonable time period. The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and not subject to pledge, transfer or encumbrance.

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).

Section 457(e)(1)(A) 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.

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.

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 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 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 Regulation sections 1.401(a)(9)-1 through 1.401(a)(9)-9.

Section 457(d)(3) of the Code 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 (\$5000.00 adjusted for inflation) which meet the requirements of section 457(e)(9)(A) and section 1.457-6(e) of the regulations.

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).

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

1. The amended and restated Plan established by State A is an eligible deferred compensation plan as defined in section 457(b) of the Code.
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 those amounts are paid to a participant or beneficiary in accordance with the terms of the Plan.

3. The "Trust," as defined in section 2.17 of the Plan, is a trust which will be treated as an organization exempt from taxation under Code section 501(a).

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than State A's amended and restated Plan described above. In addition, this ruling applies only to deferrals made after the date this ruling was issued. This ruling is directed only to State A and applies only to the amended and restated Plan submitted on April 30, 2004 and the amendments adopted on July 29, 2005. If the Plan is significantly modified, this ruling will not necessarily remain applicable. Code section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

Sincerely,



Robert D. Patchell
Branch Chief, Qualified Plans Branch 2 (Employee
Benefits)
(Tax Exempt & Government Entities)

Enclosure:

Copy for 6110 Purposes