

## INTERNAL REVENUE SERVICE

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April 24, 2000.

Entity A =

Entity B =

Entity C =

Executive E =

This responds to your letter of December 16, 1999, and subsequent correspondence, requesting a ruling concerning the Deferred Compensation Agreement (the "Agreement"), that Entities A, B, and C (the "Entities"), three closely related entities represented to be tax-exempt eligible employers described in section 457(e)(1)(B), have reached with Executive E and intend to meet the requirements for being an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986.

Under the Agreement, the Entities will credit nonqualified deferred compensation benefits provided thereunder to a bookkeeping account for the benefit of E, represented to be a key executive of all the Entities, for services to the Entities. Distribution of such amounts would be deferred until E separates from service with the Entities or until the occurrence of an unforeseeable emergency, whichever occurs earlier. The Agreement provides for a maximum deferred compensation amount that may be credited for the benefit of E, the participant, or his beneficiary in any taxable year. The amounts that may be deferred under the annual maximum limitation are within the limitations set out in section 457 of the Code.

The Agreement includes provisions for determining the time and the manner in which the participant's deferred amounts will be distributed to the participant or to his beneficiary after the participant's separation or death. The Agreement's provisions regarding withdrawals for

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unforeseeable emergencies authorize only limited hardship withdrawals in limited circumstances, in accordance with § 1.457-2(h)(4) and (5) of the Income Tax Regulations. Notwithstanding these above-described provisions, the manner and time of post-separation benefit payout must meet the minimum distribution requirements of sections 401(a)(9) and 457(d) of the Code.

The Agreement provides that all amounts deferred under the plan and all income attributable to such amounts will remain (until made available to the participant or beneficiary) solely the property and rights of the Entities, subject only to the claims of their general creditors. The Agreement also provides that a participant or beneficiary has only an unsecured right to benefits under the Agreement, and no right or claim against the assets of the employer. The rights of any participant or beneficiary to payments under the Agreement are nonassignable.

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.

Based on the provisions of the Agreement summarized above, we conclude as follows:

1. The Entities' Deferred Compensation Agreement with Executive E is an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986.
2. Amounts of compensation deferred in accordance with the Agreement, 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 the participant or his beneficiary in accordance with the terms of the Agreement.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the Agreement described above. If the Agreement is significantly modified, this ruling will not necessarily remain applicable.

This ruling is directed only to Entities A, B, and C and to Executive E and his beneficiaries. In addition, this ruling is applicable only if the Entities adopt the revised Agreement submitted on February 09, 2000. Also, this ruling applies only to deferrals made after the date of this ruling. Section 6110(k)(3) of the Code provides that this ruling 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. 2000-1, 2000-1 I.R.B. 4, 46. However, when the criteria in section 12.05 of Rev. Proc. 2000-1 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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