

From: KHyde@foley.com <KHyde@foley.com>
Sent: Monday, December 23, 2019 10:52 AM EST
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: IRS Ruling
Attachment(s): "Internal Revenue Bulletin_ 2019-03 _ Internal Revenue Service.pdf"

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Please see comment below from Bob Bernstein as to length of time it takes to receive a private letter ruling.

-Kevin E. Hyde

Foley & Lardner LLP
One Independent Drive | Suite 1300
Jacksonville, FL 32202-5017
P 904.359.8786
C 904.613.1437

Visit Foley.com [foley.com]

FOLEY
FOLEY & LARDNER LLP

175 YEARS
1842-2017

From: Bernstein, Robert S. <RBernstein@foley.com>
Sent: Monday, December 23, 2019 10:02 AM
To: Hyde, Kevin E. <KHyde@foley.com>; Russell Jr, W. Bradley <wbrussell@foley.com>
Subject: RE: JEA Question

Two issues. First, the only way to get the IRS' views on something like this is to request a private letter ruling. It often takes 4 months to get a private letter ruling, although I have seen the requests drag on much longer. Second, the IRS will not rule on every aspect of deferred compensation plans. Specifically, in their annual listing of areas that they will not rule upon, they list rulings under Section 409A as a no-rule area. See attached IRS Notice (highlighted text). For deferred compensation to be non-taxable until paid (as opposed to taxable when deferred), you must comply with a host of rules, including the rules of Section 409A (which address various procedural aspects of deferred compensation plans). Hence, while the IRS may rule on some aspects of the plan, you are unlikely to obtain a comprehensive ruling that addresses every applicable federal income tax issue.

I think that the best that JEA could do is get an opinion of counsel on the issue if they wanted all the issues analyzed and addressed.

Regards, Bob

Robert S. Bernstein, Esq.
Foley & Lardner, LLP
One Independent Drive Suite 1300
Jacksonville, FL 32202-5017
Telephone (904) 359-2000 (main)
Telephone (904) 359-8729 (direct dial)
Fax (904) 359-8700
Email rbernstein@foley.com <<mailto:rbernstein@foley.com>>



CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND DELETE THE MESSAGE. WHEN ADDRESSED TO OUR CLIENTS ANY OPINIONS OR ADVICE

EXHIBIT 46A

CONTAINED IN THIS EMAIL ARE SUBJECT TO THE TERMS AND CONDITIONS IN THE GOVERNING FOLEY & LARDNER CLIENT ENGAGEMENT LETTER. THANK YOU.

From: Hyde, Kevin E. <KHyde@foley.com>
Sent: Monday, December 23, 2019 9:28 AM
To: Bernstein, Robert S. <RBernstein@foley.com>; Russell Jr, W. Bradley <wbrussell@foley.com>
Subject: JEA Question

Bob, Brad:

During the course of discussing the JEA Performance Unit Plan (PUP) we reviewed whether the Plan could be treated as deferred compensation under Florida law. See provision of our memo below. One of the requirements is that there be a determination that the plan proceeds would not be immediately taxable. See highlighted provision. Presumably JEA would get this from the IRS. Generally, how long would it take to get such a determination. I can also send you the whole PUP memo if that helps. Thanks.

The PUP is not a traditional deferred compensation plan such as the one currently in place with JEA. However, the PUP is akin to and fits with the deferred compensation plan allowed by F.S. 112.215. If JEA desires to treat the PUP as a deferred compensation plan pursuant to §112.215, the JEA Board must approve the PUP (it has); as required JEA will seek a determination that the compensation deferred by employees to purchase the PUP is not currently taxable (F.S. 112.215(5) and (6)(b)); and that the proceeds to the employees from the PUP, if any, will not be included in the employee's taxable income until proceeds are actually received (F.S. 112.215(6)(a)). Finally, the PUP does not impose any liability on JEA, "except to show that the payments have been [or will be] remitted for the purposes for which the compensation has been deferred." (F.S. 112.215(9)). Specifically, Section 9(c) of the JEA Long-Term Performance Unit Plan states, "[t]his Plan is intended to constitute an 'unfunded' program, and no amount shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder." Further, a JEA Employee stands to gain nothing if the Threshold Value Target is not attained during the applicable Performance Period (Section 2(t) of the JEA Long-Term Performance Unit Plan).

In addition to the requirements under F.S. 112.215, the Administrator of the PUP should consult F.S. 112.21 to determine the applicability of requirements of custodial accounts in which the deferred compensation used to purchase performance units will be held. It is our understanding that JEA intends to hold the deferred compensation in an interest-bearing FDIC-insured account such as those currently used for other existing JEA deferred compensation plans.

-Kevin E. Hyde

Foley & Lardner LLP
One Independent Drive | Suite 1300
Jacksonville, FL 32202-5017
P 904.359.8786
C 904.613.1437

[VisitFoley.com foley.com](http://www.foley.com)



The information contained in this message, including but not limited to any attachments, may be confidential or protected by the attorney-client or work-product privileges. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message and any attachments or copies. Any disclosure, copying, distribution or reliance on the contents of this message or its attachments is strictly prohibited, and may be unlawful. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.