



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Taxpayer =

Predecessor =

SUB Plan A =

Trust A =

Local A =

SUB Plan B =

Trust B =

Local B =

Union C =

Product =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

City A =

City B =

This is in response to your request for rulings regarding certain contributions from the Taxpayer to Trust A and Trust B made from Date 2 through Date 4.

### Facts

The Taxpayer is engaged in the business of manufacturing, distributing, and selling Product. It owns and operates several manufacturing facilities, including one in City A ("Plant A"). It also operated a plant in City B ("Plant B"), until Date 3.

On Date 1, Predecessor transferred certain of its business assets, including Plant A and Plant B, to the Taxpayer. On that date, the Taxpayer assumed sponsorship of and responsibility for SUB Plan A and SUB Plan B and became responsible for contributions to such plans and to Trust A and Trust B.

In Year 1, the Taxpayer's corporate predecessor ("Predecessor") entered into an agreement with Local A providing for a supplemental unemployment benefit plan ("SUB Plan A") for employees at Plant A. Also in Year 1, Predecessor established a trust ("Trust A") to fund Predecessor's obligations under SUB Plan A. The Service has recognized Trust A as a voluntary employees beneficiary association under section 501(c)(9) of the Internal Revenue Code ("Code"). SUB Plan A has been amended from time to time through the collective bargaining process between Predecessor (and subsequently the Taxpayer) and Local A (which is now a local union of Union C). In particular, SUB Plan A was maintained pursuant to collectively bargained agreements from Date 2 through Date 4.

SUB Plan A provides for the payment of supplemental unemployment benefits to the Taxpayer's Plant A employees who are covered by the collective bargaining agreement between the Taxpayer and Union C. The benefits payable to an employee under SUB Plan A are dependent on several factors including the employee's length of employment, seniority, accrued credit units under SUB Plan A, and the current market value of the total assets of Trust A. Generally, benefits are payable to an employee who is on a layoff occurring as a result of a reduction in force or temporary layoff and who has received an unprotected state system unemployment benefit or was ineligible to receive a state system benefit for certain specified reasons. Benefits are also payable with respect to certain short weeks. SUB Plan A includes provisions regarding the affect on plan benefits of the receipt of state system benefits or a plant closure.

In Year 2, Predecessor entered into an agreement with Local B providing for a supplemental unemployment benefit plan ("SUB Plan B") for the benefit of certain Plant B employees of Predecessor. Also in Year 2, Predecessor established a trust ("Trust B") to fund Predecessor's obligations under SUB Plan B. The Service has recognized Trust B as forming part of a plan providing for the payment of supplemental unemployment compensation benefits described in section 501(c)(17) of the Code. SUB Plan B has been amended from time to time through the collective bargaining process between Predecessor (and subsequently the Taxpayer) and Local B (which is now also a local union of Union C) In particular, SUB Plan B was maintained pursuant to collectively bargained agreements from Date 2 through Date 4.

SUB Plan B provides for the payment of supplemental unemployment benefits to the Taxpayer's Plant B employees who are covered by the collective bargaining agreement between the Taxpayer and Union C. The benefits payable to an employee under SUB Plan A are dependent on several factors including the employee's length of employment, seniority, accrued credit units under SUB Plan B, and the current market value of the total assets of Trust B. Generally, benefits are payable to an employee who is on a layoff occurring as a result of a reduction in force or temporary layoff and who has received an unprotected state system unemployment benefit or was ineligible to receive a state system benefit for certain specified reasons. Benefits are also payable with respect to certain short weeks. SUB Plan B includes provisions regarding the affect on plan benefits of the receipt of state system benefits or a plant closure.

The Taxpayer ceased manufacturing operations at Plan B in Date 3, and the employment of a majority of the Local B members was terminated at that time. The assets of Trust B were applied to the payment of supplemental unemployment benefits to the Taxpayer's former Plan B employees pursuant to SUB Plan B, and such assets have been exhausted.

In accordance with the foregoing you have requested rulings that:

1. The Taxpayer's contributions to Trust A made from Date 2 through Date 4 are deductible under section 419 of the Code in the taxable year in which paid.
2. The contributions made by the Taxpayer to Trust A from Date 2 through Date 4 for purposes of SUB Plan A are not income to Trust A for Federal income tax purposes.
3. The Taxpayer's contributions to Trust B made from Date 2 through Date 4 are deductible under section 419 of the Code in the taxable year when paid.

4. The contributions made by the Taxpayer to Trust B from Date 2 through Date 4 for purposes of SUB Plan B are not income to Trust B for Federal income tax purposes.

Year 1 and Year 2 occurred before Date 1. Date 2 occurred after Date 1. Date 3 occurred after Date 2. Date 4 occurred shortly after Date 3.

#### Law and Analysis

Section 419(a)(2) of the Code provides that contributions to a welfare benefit fund are deductible under that section in the taxable year in which paid subject to the limitations of section 419(b). Section 419(e)(1) provides that a welfare benefit fund is any fund which is part of a plan of an employer through which an employer provides welfare benefits. Section 419(e)(2) provides that a welfare benefit is any benefit other than a benefit to which section 83(h), section 404, or section 404A applies. Section 419(e)(3)(A) provides that a fund is any organization described in paragraphs (7), (9), (17), and (20) of section 501(c).

Section 512(a)(3)(A) of the Code provides that for organizations described in section 501(c)(9) or 501(c)(17) the term "unrelated business taxable income" means the gross income (excluding any exempt function income) less the deductions allowed by that chapter which are directly connected with the production of the gross income (excluding exempt function income). Section 512(a)(3)(B) of the Code generally defines exempt function income as the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents goods, facilities, or services in furtherance of the purposes constituting the basis for exemption of the organization to which such income is paid, plus, in the case of organizations described in sections 501(c)(9) and 501(c)(17), all income which is set aside to provide for the payment of life, sick, accident, or other benefits, subject to the limitations of section 512(a)(3)(E). Section 512(a)(3)(E) limits such set asides to the extent that such amounts do not result in an amount of assets in excess of the account limit determined under section 419A, for the applicable taxable year.

Section 1.419A-2T Q & A-2T of the regulations provides that neither contributions or reserves of a welfare benefit fund maintained pursuant to one or more collectively bargained agreements shall be treated as exceeding the otherwise applicable limits of section 419(b), 419A(b), or 512(a)(3)(E) until the earlier of (i) the date on which the last of the collective bargaining agreements relating to the fund in effect on, or ratified on or before, the date of issuance of final regulations concerning such limits for collectively bargained welfare benefit funds terminates (determined without regard to any extension thereof agreed to after the date of the issuance of such final regulations), or (ii) the date 3 years after the issuance of such final regulations. Such final regulations have not been issued as of the date of this ruling.

SUB Plan A and SUB Plan B are each parts of plans of the Taxpayer. SUB Plan A and SUB Plan B each provide for benefits (i.e. supplemental unemployment compensation benefits) which are benefits other than benefits to which sections 83(h), 404, or section 404A apply. Trust A is an organization described in section 501(c)(9). Trust B is an organization described in section 501(c)(17). Accordingly Trust A and Trust B are welfare benefit funds as described in section 419(e)(2).

Furthermore, Trust A and Trust B were each maintained pursuant to collectively bargained agreements from Date 2 through Date 4. Accordingly, neither Taxpayer contributions or reserves of Trust A or Trust B from Date 2 through Date 4 will be treated as exceeding the otherwise respective applicable limits of section 419(b), 419A(b), or 512(a)(3)(E) from Date 2 through Date 4.

Thus, because Taxpayer contributions to Trust A and Trust B from Date 2 through Date 4 will not be treated as exceeding the limits of section 419(b), such contributions are deductible under section 419 in the taxable year when paid. In addition, because such contributions will not be treated as exceeding the limits of section 512(a)(3)(E), the contributions are included as exempt function income within the meaning of section 512(a)(3)(B). Therefore, such contributions are not included in "unrelated business taxable income" within the meaning of section 512(a)(3)(B).

Accordingly, it is concluded that

1. The Taxpayer's contributions to Trust A made from Date 2 through Date 4 are deductible under section 419 of the Code in the taxable year in which paid.
2. The contributions made by the Taxpayer to Trust A from Date 2 through Date 4 for purposes of SUB Plan A are not income to Trust A for Federal income tax purposes.
3. The Taxpayer's contributions to Trust A made from Date 2 through Date 4 are deductible under section 419 of the Code in the taxable year when paid.
4. The contributions made by the Taxpayer to Trust B from Date 2 through Date 4 for purposes of SUB Plan B are not income to Trust B for Federal income tax purposes.

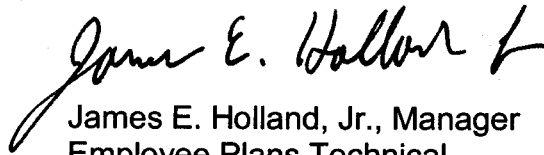
This ruling assumes that at all relevant times, Trust A is exempt under section 501(c)(9) of the Code and that Trust B is exempt under section 501(c)(17) of the Code. This ruling also assumes that at all relevant times SUB Plan A and SUB Plan B were each maintained pursuant to one or more collectively bargained agreements.

This letter is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

If you have any questions on this letter, please contact

Sincerely,

  
James E. Holland, Jr., Manager  
Employee Plans Technical