Significant Index Number: 4980.00-00

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201430025

MAY 0 1 2014

T:EP:RA:T2

Re:

Company =

Prior Company

Plan =

Insurer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This letter is in response to your request for a ruling dated September 20, 2010, which was submitted by your authorized representative, requesting the following rulings:

1. Because the return to the Company of the excess assets remaining in the Plan will not occur until after the satisfaction of all liabilities with respect to employees and beneficiaries under the Plan, the return of the excess assets to the Company will not violate the exclusive benefit rule of section 401(a)(2) of the Internal Revenue Code (Code).

2. Because the excess assets remaining in the Plan exceed the amount that was required to make the Plan sufficient for benefit liabilities and, therefore, are not deductible under section 404(o)(5) of the Code, the return of the excess assets to the Company will not constitute an employer reversion under section 4980 of the Code and will not be subject to the excise tax set forth in section 4980 of the Code.

The following facts and representations have been submitted:

The Company is a long-distance bus carrier. On Date 1, the Company purchased certain assets and assumed certain liabilities from the Prior Company. In connection with this transaction, the Company became the sponsoring employer of the Plan.

The Plan is a single-employer, defined benefit pension plan. Benefit accruals to the Plan ceased effective Date 2.

The Company terminated the Plan effective Date 3. The Company requested the Internal Revenue Service ("IRS") to issue a determination letter regarding the qualification of the Plan on its termination. The IRS issued the determination letter on Date 4.

On Date 5, the Company filed Form 500, Standard Termination Notice Single Employer Plan Termination, with the Pension Benefit Guaranty Corporation ("PBGC"). During the 60-day period following the filing of the notice, the PBGC did not object to the notice for a standard termination.

It was the Company's intention to contribute up to the amount necessary to ensure that there were sufficient assets in the Plan to effect a standard termination. The Company also intended to purchase a single premium group annuity contract with the Plan assets to settle the Plan's liability. On Date 6, before receiving the bids on the annuity contract, the Company contributed an estimated amount needed to fully fund the Plan, Amount 1, to the Plan. On Date 7, the Company purchased a single premium group annuity contract from the Insurer. The price quoted by the Insurer is neither the highest nor the lowest bid that the Company received. On Date 8, after all the benefit liabilities of the Plan were satisfied, Amount 2 remained in the Plan. On Date 9, Amount 3 was refunded to the Plan by the Insurer. The premium refund was based on the Insurer's comparison of the participant data on which the premium was calculated against the actual participant data provided to the Insurer.

Plan Provisions

Section 10.2 of the Plan document, Termination of the Plan, states that after the Plan has been terminated and all liabilities to Plan participants and beneficiaries have been satisfied, any residual assets remaining in the Plan shall be returned to the Company.

Section 12.4, Repayments to the Employer, provides that:

(1) Any Plan assets attributable to any contribution made to this Plan by the Company because of a mistake of fact shall be returned to the Company within one year after the date of contribution.

(2) All Company contributions are expressly contributed based upon such contributions' deductibility under Code section 404. Any Plan assets attributable to any contributions made to this Plan by the Company shall be refunded to the Company, to the extent the income tax deduction for such contribution is disallowed. Such amount shall be refunded within one taxable year after the date of such disallowance or within one year of the resolution of any judicial or administrative process with respect to the disallowance.

The above provisions have been in effect for more than five years.

Law

Section 401(a)(2) of the Code generally prohibits, prior to the satisfaction of all liabilities with respect to employees and beneficiaries under the trust, the diversion of trust assets for purposes other than for the exclusive benefit of the employees or beneficiaries for whom an employer maintains a qualified pension plan.

Section 1.401(a)-2 of the Income Tax Regulations ("Regulations") provides that section 1.401-2, a regulation promulgated prior to Employee Retirement Income Security Act of

1974 ("ERISA"), provides rules under section 401(a)(2) of the Code and that this regulation is applicable unless otherwise provided.

Section 1.401-2 of the Regulations provides rules under section 401(a)(2) of the Code for the impossibility of diversion under the trust instrument. Section 1.401-2(b)(1) of the Regulations provides that the intent and purpose in section 401(a)(2) of the Code of the phrase "prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust" is to permit the employer to reserve the right to recover at the termination of the trust, and only at such termination, any balance remaining in the trust which is due to erroneous actuarial computations during the previous life of the trust. A balance due to an "erroneous actuarial computation" is the surplus arising because actual requirements differ from the expected requirements even though the latter were based upon previous actuarial valuations of liabilities or determinations of costs of providing pension benefits under the plan and were made by a person competent to make such determinations in accordance with reasonable assumptions and correct procedures related to the method of funding.

Section 403 (c)(2)(C) of ERISA, for which there is no parallel provision in the Code, provides that the general prohibition against diversion does not preclude the return of a contribution made by an employer to a plan if the contribution is conditioned on its deductibility under section 404 of the Code. The return to the employer of the amount involved must generally be made within one year of disallowance of the deduction.

Section 404 of the Code provides for the deduction for contributions of an employer to a qualified plan. Section 404(o)(5) provides that for certain terminating plans, the limitation on the amount deductible under section 404(o)(2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities.

Rev. Rul. 91-4, 1991-1 C.B. 57, provides that language providing for a return of contributions in the circumstances specified in section 403(c)(2) of ERISA may be included in a plan intended to qualify under section 401 of the Code. Thus, plans that are amended to include language that allows the return of a contribution made by an employer to a plan if the contribution is conditioned on its deductibility under section 404 of the Code and the deduction is subsequently disallowed, will not fail to satisfy section 401(a)(2) of the Code solely as the result of such an amendment.

Rev. Proc. 90-49, 1990-2 C.B. 620, sets forth the procedure whereby, under certain circumstances, a disallowance of the deduction of employer contributions to a qualified defined benefit pension plan may be obtained; thereby, fulfilling a condition under which such contributions could revert to the employer.

Section 4980(a) of the Code provides for a tax of 20 percent on the amount of any reversion of plan assets to the employer from a qualified plan. Section 4980(b) of the Code provides that the tax imposed by section 4980(a) shall be paid by the employer maintaining the plan.

Section 4980(c)(2)(A) of the Code defines the term "employer reversion" to mean the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

Section 4980(c)(2)(B) of the Code provides in pertinent part that the term "employer reversion" shall not include (i) except as provided in Regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating section 401 of the Code, or (ii) any distribution to the employer allowable under section 401(a)(2) of the Code in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of the contributions to be deductible.

Analysis

Because the Plan has received a favorable determination letter, the Plan has been determined to be a qualified plan under section 401(a) of the Code.

A surplus remains in the trust after the Plan satisfied all liabilities with respect to employees and beneficiaries of the Plan. This surplus came from two sources.

First, Amount 2 is the result of the Company contributing Amount 1, which was more than needed to fully fund the Plan's liability upon the Plan's termination. If the Company had waited until after the selection of bids from the insurance companies to make the contribution, or if the Company chose a bid from another insurance company that was slightly higher than the bid from the Insurer, there would have been no surplus. Nonetheless, Amount 1 falls within the range of contributions to fully fund the Plan based on the bids from the insurance companies. Further, facts and circumstances indicate that the Company had no incentive to contribute more than what was needed to fully fund the Plan and it is reasonable to conclude that Amount 1 was calculated by an actuary using reasonable actuarial assumptions. Accordingly, Amount 2 can be considered the result of erroneous actuarial computations within the meaning of section 1.401-2(b)(1) of the Regulations; therefore, the return to the Company of Amount 2 will not violate section 401(a)(2) of the Code.

Second, after satisfaction of all Plan liabilities, the Company was informed by the Insurer that it was entitled to a refund of premium totaling Amount 3. According to the Insurer, the refund was the result of revisions to the participant data that was used in the initial bid specifications provided to the Insurer. Therefore, the Insurer's initial higher premium bid was based on participant data which was later revised. This caused the Company to contribute more to the Plan than was ultimately required to satisfy all of the Plan's liabilities by purchasing an annuity from the Insurer. Consequently, the revisions in calculations by the Insurer were due to the result of an "erroneous actuarial computation" as described in section 1.401-2 of the Regulations and accordingly may be returned to the Company.

Thus, with respect to your ruling requests, we conclude as follows:

The surplus remaining in the trust equal to Amount 2 plus Amount 3 (Amount 4) is considered the result of erroneous actuarial computations within the meaning of section 1.401-2 of the Regulations. The return of these amounts to the Company will occur after the satisfaction of all liabilities with respect to employees and beneficiaries of the Plan. Accordingly, the return to the Company of Amount 4 will not violate section 401(a)(2) of the Code.

Further, Rev. Proc. 90-49 sets forth the procedure whereby, under certain circumstances, a disallowance of the deduction of employer contributions to a qualified defined benefit plan may be obtained; thereby fulfilling a condition under which such contributions could revert to the employer. Rev. Rul. 91-4 provides that a plan qualified within the meaning of section 401(a) of the Code may contain a provision authorizing return of employer contributions made because the contribution is not deductible as provided in section 403(c)(2)(C) of ERISA. As noted above, the Plan contains such a provision.

Amount 4 is in excess of what was required to make the plan sufficient for benefit liabilities. Therefore, we have determined that Amount 4 may be considered as disallowed solely for the purpose of applying Rev. Rul. 91-4.

Accordingly, Amount 4 is described in section 4980(c)(2)(B)(ii) of the Code, and thus the return to the Company of Amount 4 does not constitute an employer reversion under section 4980 of the Code.

Ruling

1. Because the return to the Company of the excess assets remaining in the Plan will not occur until after the satisfaction of all liabilities with respect to employees and beneficiaries under the Plan, the return of the excess assets up to Amount 4 to the Company will not violate the exclusive benefit rule of section 401(a)(2) of the Code.

2. Because the excess assets remaining in the Plan exceed the amount that was required to make the Plan sufficient for benefit liabilities and Amount 4 is disallowed as a deduction solely for the purpose of applying Rev. Rul. 91-4, it is not deductible under section 404(o) of the Code. Therefore, the return of the excess assets up to Amount 4 to the Company will not constitute an employer reversion under section 4980 of the Code and will not be subject to the excise tax set forth in section 4980 of the Code.

This ruling only addresses the two issues that we have ruled upon. In particular, we are not expressing any opinion as to deductibility of any particular contribution to the Plan under section 404(a) of the Code or the effect on taxable filings made outside of the Plan.

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

A copy of this ruling letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you require further assistance in this matter, please contact
at .

Sincerely yours,

David M. Ziegler, Manager
Employee Plans Actuarial Group 2

Cc: