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Date:
June 16, 2016

Legend:

Taxpayer =

Company A =

Company B =

Retirement Plan A =

Retirement Plan B =

Retirement Plan C =

Health Plan for Retirees =

Reimbursement Arrangement Plan =

Medical Account Plan =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Y =

Date 1:

Dear :

This letter responds to your January 14, 2016 ruling request, submitted by your authorized representatives, as supplemented by correspondence dated April 20, 2016, requesting rulings on the Federal tax consequences of a proposed arrangement under sections 105, 106, and 401(h) of the Internal Revenue Code (the "Code") and their accompanying regulations.

The following facts and representations are submitted under penalties of perjury in support of your request:

Company A maintained Retirement Plan A, a defined benefit plan qualified under section 401(a) of the Code.

In Year 1, Retirement Plan A, sponsored by Company A, was amended to add a retiree health account described in section 401(h) of the Code. No employee contributions were required to be made to the Retirement Plan A 401(h) account. Retirement Plan A received a favorable determination letter from the Internal Revenue Service following the amendment which added the 401(h) account.

In Years 2, 3, and 4, in accordance with a special transition rule set forth in Section 7311 of the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239), all of the eligibility conditions for which Company A satisfied, Company A made direct contributions to the Retirement Plan A 401(h) account of approximately $Y. At no time did Company A transfer any assets from Retirement Plan A, including any transfer of assets pursuant to section 420 of the Code, to the Retirement Plan A 401(h) account. Following Year 4, Company A made no further contributions to that 401(h) account.

Company B was formed in Year 5 as a subsidiary of Company A. In Year 5, at the time Company A formed Company B as a subsidiary, Company B adopted Retirement Plan B, identical in its terms to Retirement Plan A and including a 401(h) account. At the same time, a portion of the assets of Retirement Plan A were transferred from Retirement Plan A to Retirement Plan B, and assets from the Retirement Plan A 401(h)

account were transferred to the Retirement Plan B 401(h) account. Since Company B's formation, no contributions were made by Company B to the Retirement Plan B 401(h) account.

In Year 6, Company B became a separate, publicly-traded company. Thereafter, Company B continued to maintain Retirement Plan B, including the 401(h) account. No employee contributions were made to Retirement Plan B, and Company B has made no additional contributions to the Retirement Plan B 401(h) account.

Taxpayer was formed in Year 7 as a subsidiary of Company B. In Year 7, at the time Company B formed Taxpayer as a subsidiary, Taxpayer adopted Retirement Plan C, identical in its terms to Retirement Plan B. At the same time, a portion of the assets of Retirement Plan B were transferred from Retirement Plan B to Retirement Plan C, and assets from the Retirement Plan B 401(h) account were transferred to the Retirement Plan C 401(h) account. Since Taxpayer's formation, no contributions were made by Taxpayer to the Retirement Plan C 401(h) account. Taxpayer represents that a determination letter request for the initial qualification of Retirement Plan C was submitted to the IRS and is pending review at the time of this private letter ruling request.

In Year 7, Taxpayer became a separate, publicly-traded company. Thereafter, Taxpayer continued to maintain Retirement Plan C, including the 401(h) account. No employee contributions were made to Retirement Plan C, and Taxpayer has not made any additional contributions to the Retirement Plan C 401(h) account. All retired employees of Taxpayer who are eligible to receive medical benefits under the Retirement Plan C 401(h) account are eligible to receive retirement benefits under Retirement Plan C, or are retired from employment with Taxpayer by reason of permanent disability.

Continuously since becoming a separate, publicly-traded company in Year 7, Taxpayer has maintained a traditional major medical plan for its retirees under the Health Plan for Retirees. For a certain group of retirees (the "Grandfathered Group"), Taxpayer was obligated to maintain such medical benefits pursuant to the transactions that resulted in Company B and Taxpayer becoming separate, publicly-traded companies.

Commencing in Year 7, Taxpayer has used the Retirement Plan C 401(h) account to reimburse certain individual health insurance premiums (and not any other section 213(d) expenses) for members of the Grandfathered Group, their spouses, and certain of their dependents. For eligible retirees in the Grandfathered Group who are under age 65, the 401(h) account is used to subsidize a portion of the monthly medical plan premiums under the Health Plan for Retirees. For Taxpayer's eligible retirees in the Grandfathered Group who turn age 65, and are enrolled in Medicare, the 401(h) account is used to provide reimbursement under the Reimbursement Arrangement Plan of premiums for Medicare and certain individual health insurance premiums.

In Year 7, Taxpayer adopted the Medical Account Plan, which is a retiree-only health reimbursement account plan established in accordance with section 105 of the Code and unconnected to Retirement Plan C, the 401(h) account, or the Reimbursement Arrangement Plan. The Medical Account Plan is for the benefit of eligible retirees and totally disabled former employees not included in the Grandfathered Group (the "Non-Grandfathered Group"). Taxpayer represents that certain members of the Non-Grandfathered Group, including individuals who have retired from employment with Taxpayer by reason of permanent disability, may be eligible to receive benefits under the Medical Account Plan but not under Retirement Plan C. The Plan Document and Summary Plan Description of the Medical Account Plan provided by Taxpayer provides that an individual may not receive benefits under the Medical Account Plan at any time while an active employee, whether part-time or full-time, of Taxpayer. Based on conversations with your representatives, we therefore understand that, as a retiree-only plan, the Medical Account Plan covers no active employees.[1]

Prior to age 65, former employees in the Non-Grandfathered Group are eligible to purchase coverage for themselves, their spouse, and their eligible dependents under the Health Plan for Retirees, but receive no premium subsidy.

A member of the Non-Grandfathered Group can use amounts available under the Medical Account Plan (which is a notional account) to pay premiums for the Health Plan for Retirees, Medicare, or certain individual health insurance purchased on the open market for members of the Grandfathered Group, their spouses, and certain of their dependents. In addition, the Plan Document and Summary Plan Description of the Medical Account Plan provided by Taxpayer provides that, effective January 1, 2016, amounts paid under the Medical Account Plan can be used to pay premiums for certain other employer-sponsored (i.e., non-Taxpayer sponsored) health coverage under a group health plan that does not cover any active employees[2] that are substantiated to have been paid to such a plan on an after-tax basis. The Retirement Plan C 401(h) account is not currently used to provide any of the amounts paid under the Medical Account Plan. Taxpayer is under no obligation, contractual or otherwise, to provide any benefit to the Non-Grandfathered Group under the Medical Account Plan.

On Date 1, Retirement Plan C, the Health Plan for Retirees, and Medical Account Plan were closed to new entrants who did not meet certain age and service requirements

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[1] Accordingly, we assume that the Medical Account Plan is, under section 9831(a)(2), exempt from Chapter 100 of the Code, including the market reform provisions of the Patient Protection and Affordable Care Act incorporated into Chapter 100 by section 9815.

[2] Accordingly, we assume that such a group health plan is, under section 9831(a)(2), exempt from Chapter 100 of the Code, including the market reform provisions of the Patient Protection and Affordable Care Act incorporated into Chapter 100 by section 9815.

prior to Date 1, or who had not become disabled prior to that date. Individuals falling into this category are referred to here as the “Excluded Group.”

Taxpayer represents that, although Taxpayer has made no contributions to the Retirement Plan C 401(h) account at any time after Year 7, the account has assets in excess of all current and reasonably anticipated future obligations to members of the Grandfathered Group. Taxpayer will amend Retirement Plan C, including the terms under which it established the 401(h) account, and the Medical Account Plan, to permit the Retirement Plan C 401(h) account to reimburse members of the Non-Grandfathered Group for premiums eligible for reimbursement under the Medical Account Plan that are considered “sickness, accident, hospitalization, [or] medical expenses” under section 401(h) of the Code and § 1.401-14 of the Income Tax Regulations. All members of the Non-Grandfathered Group who receive the benefit of such reimbursements from the Retirement Plan C 401(h) account are also eligible to receive retirement benefits under Retirement Plan C, or have retired from employment with Taxpayer by reason of permanent disability. No portion of the 401(h) account will be used to provide any benefit or reimbursement to any member of the Excluded Group or to any member of the Non-Grandfathered Group who does not meet the requirements to be considered “retired employees, their spouses, or their dependents” under section 401(h) of the Code and § 1.401-14 of the Income Tax Regulations.

Taxpayer further represents that:

(1) The Retirement Plan C 401(h) account was not funded, directly or indirectly, by a Code section 420 transfer;

(2) The Retiree Medical Account is an health reimbursement arrangement, as defined in Notice 2002-45, 2002-2 C.B. 93;

(3) Taxpayer does not have a contractual obligation to fund the Medical Account Plan and may amend or terminate its retiree health plans at any time;

(4) Use of the Retirement Plan C 401(h) account to reimburse eligible individuals of the Non-Grandfathered Group who are “retired employees, their spouses, or their dependents” under section 401(h) of the Code and § 1.401-14 of the Income Tax Regulations (“Eligible Individuals”) for eligible health plan premiums will not affect benefits that are already being paid through the Retirement Plan C 401(h) account;

(5) The Medical Account Plan is currently and, at all times following the implementation of the use of the Retirement Plan C 401(h) account to reimburse Eligible Individuals for eligible health plan premiums, will remain unfunded and no Eligible Individual will be entitled to any amount under the Medical Account Plan in excess of premiums requested to be reimbursed under the Retirement Plan C 401(h) account; and

(6) Until premium reimbursements are made under the Medical Account Plan, all Medical Account Plan-related funds will remain in the Retirement Plan C 401(h) account, and, in the event of termination of either Retirement Plan C or the Medical Account Plan, all such amounts remaining in the 401(h) account after satisfaction of all liabilities to provide medical benefits will be subject to section 401(h) (including section 401(h)(5) and the excise tax on reversions pursuant to section 4980).

RULINGS REQUESTED

Taxpayer requests rulings that:

(1) Use of the Retirement Plan C 401(h) account to reimburse eligible individuals of the Non-Grandfathered Group who are “retired employees, their spouses, or their dependents” under section 401(h) of the Code and § 1.401-14 of the Income Tax Regulations (“Eligible Individuals”) for eligible health plan premiums will not violate section 401(h) of the Code and § 1.401-14 of the Income Tax Regulations or otherwise cause Retirement Plan C to lose it its tax-qualified status under section 401(a) of the Code;

(2) Contributions from the Retirement Plan C 401(h) account to the Medical Account Plan accounts of Eligible Individuals that are used solely for reimbursements of eligible health plan premiums for those individuals in accordance with the terms of the Medical Account Plan are excludible from the gross income of those individuals under section 106; and

(3) Reimbursements of eligible health plan premiums to Eligible Individuals from the Retirement Plan C 401(h) account and through the Medical Account Plan in accordance with the terms of the Medical Account Plan are excludible from the gross income of those individuals under section 105.

LAW

Section 61(a)(1) of the Code and § 1.61-21(a)(3) of the Income Tax Regulations provide that, except as otherwise provided in Subtitle A, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items.

Section 105(a) provides that, except as otherwise provided in this section, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

Section 105(b) provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses)

for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, his dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27. Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

Section 106 provides that gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness. Section 1.106-1 of the Income Tax Regulations provides that the gross income of an employee does not include contributions which the employee's employer makes to an accident or health plan for compensation (through insurance or otherwise) for personal injuries or sickness to the employee or the employee's spouse or dependents (as defined in section 152).

Section 401(a) describes requirements for a qualified trust that is created or organized in the United States and forms part of a pension plan of an employer that is for the exclusive benefit of the employer's employees or their beneficiaries. Section 501(a) provides in pertinent part that an organization described in section 401(a) is generally exempt from income tax.

In pertinent part, section 401(h) provides that, under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

> (1) such benefits are subordinate to the retirement benefits provided by the plan,
> (2) a separate account is established and maintained for such benefits,
> (3) the employer's contributions to such separate account are reasonable and ascertainable,
> (4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits, and
> (5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer.

Section 1.401-14(a) of the Income Tax Regulations provides that, under section 401(h), a qualified pension or annuity plan may make provision for the payment of sickness,

accident, hospitalization, and medical expenses for retired employees, their spouses, and their dependents. The term "medical benefits described in section 401(h)" is used in this section to describe such payments.

Section 1.401-14(b)(1) of the Income Tax Regulations provides that, under section 401(h), a qualified pension or annuity plan may provide for the payment of medical benefits described in section 401(h) only for retired employees, their spouses, or their dependents. To be "retired" for purposes of eligibility to receive medical benefits described in section 401(h), an employee must be eligible to receive retirement benefits provided under the pension plan, or else be retired by an employer providing such medical benefits by reason of permanent disability. For purposes of the preceding sentence, an employee is not considered to be eligible to receive retirement benefits provided under the plan if he is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits.

In Rev. Rul. 2002-41, 2002-2 C.B. 75, an employer sponsors a health reimbursement arrangement (HRA) that is paid for solely by the employer and not through salary reduction contributions. The HRA reimburses substantiated medical care expenses (as defined in section 213(d)) of participating employees and their spouses and dependents (as defined in section 152) up to a maximum annual reimbursement amount. Unused amounts from one coverage period are carried forward to subsequent coverage periods. Participating employees have no right to receive cash or any other benefit in lieu of medical expense reimbursements. In Situation 2 of Rev. Rul. 2002-41, the maximum reimbursement amount under the HRA that is not applied to reimburse medical care expenses before an employee retires or otherwise terminates employment continues to be available after retirement or termination for any medical care expense incurred by the former employee or the former employee's spouse and dependents. The ruling concludes that coverage and reimbursements made under the HRA are excludable from the gross income of participating employees under sections 106 and 105.

Notice 2002-45, 2002-2 C.B. 93, describes the tax treatment of HRAs. The notice explains that a tax-favored HRA is an arrangement that (1) is paid for solely by the employer and not pursuant to a salary reduction election or otherwise under a section 125 cafeteria plan; (2) reimburses the employee for medical care expenses (as defined in section 213(d)) incurred by the employee or by the employee's spouse or dependents; and (3) provides reimbursements up to a maximum dollar amount with any unused portion of that amount at the end of the coverage period carried forward to subsequent coverage periods.

CONCLUSION

Based on the facts and representations provided by Taxpayer:

(1) Use of the Retirement Plan C 401(h) account to reimburse eligible individuals of the Non-Grandfathered Group who are "retired employees, their spouses, or their dependents" under section 401(h) of the Code and § 1.401-14 of the Income Tax Regulations ("Eligible Individuals") for eligible health plan premiums will not violate section 401(h) of the Code and § 1.401-14 of the Income Tax Regulations or otherwise cause Retirement Plan C to lose it its tax-qualified status under section 401(a) of the Code.

(2) Contributions from the Retirement Plan C 401(h) account to the Medical Account Plan accounts of Eligible Individuals that are used solely for reimbursements of eligible health plan premiums for those individuals in accordance with the terms of the Medical Account Plan are excludable from those individuals' gross income under section 106. As provided in the Plan Document and Summary Plan Description of the Medical Account Plan provided by Taxpayer, such contributions include amounts used to pay premiums for certain other employer-sponsored (i.e., non-Taxpayer sponsored) health coverage under a group health plan that does not cover any active employees[3] that are substantiated to have been paid to such a plan on an after-tax basis. These amounts are excluded from the Eligible Individual's gross income under section 106 because they are used to pay the premium on a group health plan covering one or more employees, the employee's spouse and dependents, or by contributing to a separate trust or fund, which provides accident or health benefits directly or through insurance to one more employees, the employee's spouse and dependents.

(3) Reimbursements of eligible health plan premiums (including premiums paid to a group health plan on an after-tax basis by an eligible retired employee's retired spouse, as described in (2) above) to Eligible Individuals from the Retirement Plan C 401(h) account and through the Medical Account Plan in accordance with the terms of the Medical Account Plan are excludible from the gross income of those individuals under section 105.

These rulings are based on the assumption that Retirement Plan B and Retirement Plan C are qualified under section 401(a).

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2016-1, 2016-1 I.R.B. 1, § 7.01(15)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation

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[3] Accordingly, we assume that such a group health plan is, under section 9831(a)(2), exempt from Chapter 100 of the Code, including the market reform provisions of the Patient Protection and Affordable Care Act incorporated into Chapter 100 by section 9815.

retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2016-1, § 11.05.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

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

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

If you have any questions concerning this letter, please contact Gregory Burns, Attorney, at .

Sincerely,

Janet A. Laufer
Senior Technician Reviewer
Health & Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt & Government Entities)