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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP1
PLR-133353-17

In Re:

Date:
May 03, 2018

Plan A =
Plan B =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear :

This is in response to your request dated November 1, 2017, as supplemented by correspondence dated January 29, 2018 and April 24, 2018, in which you request various private letter rulings regarding Taxpayer's administration of its retirement plans.

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested:

Taxpayer established and maintains Plan A, a defined benefit plan which is a governmental plan within the meaning of section 414(d) of the Internal Revenue Code ("Code"). The plan covers many of Taxpayer's employees, subject to certain restrictions based on date of first eligibility to be a member. Historically, Plan A provided only a traditional pension benefit. An employee who became a member of Plan A prior to Date 1 was permitted to elect to earn a cash balance benefit rather than the traditional benefit. Employees who first became members of Plan A on or after Date 1 and before Date 2 participate only in the cash balance structure of the plan. Employees who are members of Plan A are also eligible to make contributions to Plan B. Plan B was established on Date 4 and is a defined contribution plan that is a permissible governmental 401(k) plan and a governmental plan under section 414(d).

Effective Date 3, the cash balance accounts of employees who became members of Plan A on or after Date 1 were frozen unless the member had on Date 3. For those employees, future benefits are earned under Plan B. Employees hired on or after Date 2 are not eligible to participate in Plan A, and they participate solely in Plan B. There are no picked up contributions, within the meaning of section 414(h), to either Plan A or Plan B. Neither plan has a mandatory employee contribution. However, certain employees may choose to make after-tax contributions to Plan A, and all employees may make pre-tax, Roth, and after-tax contributions to Plan B.

Taxpayer intends to implement a program, , to allow an eligible employee to choose to cease accruing benefits in Plan A and to receive future accruals solely in Plan B. Employees eligible to make this election include employees with a cash balance account under Plan A who first became a member of Plan A either (1) prior to Date 1, or (2) on or after Date 1 and who had of cash balance service as of Date 3. Members of Plan A who are retirees currently in pay status, terminated employment with a deferred vested benefit, or continue to accrue benefits under Plan A's traditional benefit formula are not eligible to make this election.

Taxpayer also intends to amend Plan A and Plan B to allow those participants in Plan A's cash balance program to make a one-time, irrevocable election to make a plan-to-plan transfer of their cash balance account balance (along with any member contributions) under Plan A to Plan B on .[1] Any amounts transferred to Plan B from Plan A will be separately accounted for under Plan B and will retain the characteristics of Plan A. For example, these amounts will not be eligible for in-service withdrawals (such as hardship distribution or at age 59 ½) or loans. Any benefits earned by the employee after the date of transfer will be accrued under Plan B. Employees eligible to make a transfer election include cash balance participants who (1) made the election described in this letter ruling to choose to cease accruing benefits in Plan A and to receive future accruals solely in Plan B, or (2) first became a member of Plan A or on or after Date 1 and had as of Date 3 (as of which date their Plan A benefits were frozen and they began earning benefits under Plan B). After the amounts are transferred from Plan A, no further benefits will be earned or paid under Plan A for that employee.

Based on the above representations, you request the following rulings:

1. The amendments to Plan A and Plan B permitting an eligible employee to elect to terminate cash balance benefit accruals in Plan A and continue earning benefits solely in Plan B will not result in Taxpayer having established an impermissible cash or deferred arrangement within the meaning of section 401(k).

[1] Plan A and Plan B are governmental plans, and thus are not subject to section 411(d)(6).

2. Plan A may treat the transfer of assets of an eligible employee from Plan A to Plan B as a plan-to-plan transfer that will not be required to be reported as includible in the eligible employee's gross income under section 72 or 402.

3. Plan B will not be required to treat assets transferred from Plan A to Plan B pursuant to an eligible employee's one-time election as annual additions to Plan B for purposes of applying the limitations under section 415(c).

Section 72 provides generally that gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

Section 401(k)(1) provides that a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of section 401(a) merely because the plan includes a qualified cash or deferred arrangement as defined in section 401(k)(2).

Section 401(k)(2)(A) defines a cash or deferred arrangement as any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of section 401(a) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash.

Section 401(k)(4)(B)(ii) provides that a cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. However, section 1116(f)(2)(B)(i) of the Tax Reform Act of 1986, P.L. 99-514, provides a transition rule pursuant to which the prohibition of section 401(k)(4)(B)(ii) does not apply to any cash or deferred arrangement adopted by a State or local government (or political subdivision thereof) before May 6, 1986. Thus, even if a governmental employer maintains a defined contribution plan (as compared to a defined benefit plan), the defined contribution plan cannot generally include a qualified cash or deferred arrangement within the meaning of section 401(k), unless the cash or deferred arrangement was adopted before May 6, 1986.

Section 1.401(k)-1(a)(1) of the Income Tax Regulations provides that a plan, other than a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan, does not satisfy the requirements of section 401(a) if the plan includes a cash or deferred arrangement. For this purpose, a cash or deferred arrangement is part of a plan if any contributions to the plan, or accruals or other benefits under the plan, are made or provided pursuant to the cash or deferred arrangement. Because a defined benefit plan is not a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan, if a defined benefit plan includes a cash or deferred arrangement, it does not satisfy the requirements of section 401(a).

Section 1.401(k)-1(a)(2)(i) provides that a cash or deferred arrangement is an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a) (including a contract that is intended to satisfy the requirements of section 403(a)).

Section 1.401(k)-1(a)(3)(i) provides that a cash or deferred election is any direct or indirect election (or modification of an earlier election) by an employee to have the employer either (A) provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available; or (B) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

Section 1.401(k)-1(a)(3)(iv) provides that an amount is currently available if it has been paid to the employee or if the employee is able currently to receive the cash or other taxable amount at the employee's discretion. An amount is not currently available if there is a significant limitation or restriction on the employee's right to receive the amount currently. Similarly, an amount is not currently available as of a date if the employee may under no circumstances receive the amount before a particular time in the future.

Section 402(a) provides generally that any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72.

Section 411(d)(6) provides that a plan shall be treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(d)(2), or section 4281 of the Employee Retirement Income Security Act of 1974.

Section 411(e)(1) provides that the provisions of section 411 do not apply to governmental plans (within the meaning of section 414(d)). Section 411(e)(2) provides that a plan described in section 411(e)(1) is treated as meeting the requirements of section 411 for purposes of section 401(a) if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on September 1, 1974.

Section 415(a)(1)(B) provides that a defined contribution plan is not a qualified plan if contributions and other additions made to the plan with respect to any participant in a taxable year exceed the limitation of section 415(c).

Section 415(c)(1) provides that contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of: (A) $40,000 (as adjusted for cost-of-living increases pursuant to section 415(d)(1)(C)), or (B) 100 percent of the participant's compensation.

Section 415(c)(2) defines the term "annual addition" as the sum for any year of: (A) employer contributions, (B) the employee contributions, and (C) forfeitures.

Section 1.415(c)-1(b)(1)(iii) provides that the direct transfer of a benefit or employee contributions from a qualified plan to a defined contribution plan does not give rise to an annual addition.

Revenue Ruling 67-213, 1967-2 C.B. 149, involves the transfer of funds directly from a trust forming part of a qualified plan under section 401(a) to a trust forming part of another qualified plan. The revenue ruling provides that if a participant's interest in a qualified plan is transferred from the trust of a qualified plan to the trust of another qualified plan without being made available to the participant, no taxable income will be recognized to the participant by reason of such transfer.

With regard to your first requested ruling, § 1.401(k)-1(a)(3)(i) provides that a cash or deferred election is any election (or modification of an earlier election) by an employee to have the employer either (A) provide an amount to the employee in the form of cash or some other taxable benefit that is not currently available, or (B) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

Taxpayer represents that participants in Plan A's cash balance program will be able to elect to end benefit accruals in Plan A and continue prospective benefit accruals only in Plan B. Taxpayer also represents that neither Plan A nor Plan B has mandatory employee contributions that are treated as pre-tax contributions. Because there are no pre-tax contributions to Plan A and because employees currently participate in Plan B, neither choice being offered in this one-time election causes any amount to be provided to the employee in the form of cash or some other taxable benefit not currently available. Therefore, with regard to your first requested ruling, an election to terminate accruals in Plan A and continue earning benefits in Plan B does not constitute a cash or deferred arrangement within the meaning of section 401(k) and § 1.401(k)-1(a)(2)(i).

With regard to your second requested ruling, Revenue Ruling 67-213 provides that if a participant's interest in a qualified plan is transferred from the trust of a qualified plan to the trust of another qualified plan without being made available to the participant, no taxable income will be recognized to the participant by reason of such transfer. In addition, section 402(a) provides that only amounts actually distributed are taxable to

the distributee, in the taxable year in which distributed, under section 72. Taxpayer represents that amounts will be paid from Plan A directly to Plan B in a plan-to-plan transfer and no amounts will be distributed to a participant. In addition, the funds will not be made available to a participant but will instead remain in a trust. Therefore, since no distribution will occur as a result of the one-time irrevocable election to make a plan-to-plan transfer of assets from Plan A to Plan B, the Taxpayer will not be required to report the transfers as included in the gross income of the eligible employee under section 72 and 402.

With regard to your third requested ruling, Taxpayer represents that amounts will be paid from Plan A directly to Plan B in a plan-to-plan transfer and no amounts will be distributed to a participant. The direct transfer of a benefit or employee contributions from a qualified plan to a defined contribution plan is not an annual addition under section 415(c)(1). Therefore, Plan B will not be required to treat assets transferred from Plan A to Plan B pursuant to an eligible employee's one-time election as annual additions to Plan B for purposes of applying the limitations under section 415(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, no opinion is expressed or implied concerning whether Plan A and Plan B are governmental plans within the meaning of section 414(d) and whether Plan A and Plan B are tax-qualified plans under section 401(a).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B. 1, section 7.01(16)(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 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. 2018-1, section 11.05.

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

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

Laura B. Warshawsky
Branch Chief
Qualified Plans Branch 1
Tax Exempt and Government Entities
Office of Associate Chief Counsel

cc: