Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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CC:EEE:EB:QP1
PLR-123575-21

Date:
May 04, 2022

In Re:

Taxpayer =
Pension Plan =
Plan 1 =
Plan 2 =
Plan 3 =

Dear :

This is in response to a request dated November 11, 2021, as supplemented by correspondence dated March 22, 2022, in which your authorized representatives request a private letter ruling on your behalf concerning the proper treatment under section 4980 of the Internal Revenue Code (Code) of a transfer of a portion of excess assets from a terminating defined benefit pension plan to three ongoing defined contribution plans.

The following facts and representations have been submitted under penalties of perjury:

Facts

Pension Plan is a defined benefit pension plan that is designed to be a tax-qualified plan under section 401(a). It was established in 1987 via the merger of several defined benefit pension plans. Effective in 2004, all newly hired employees of Taxpayer generally were excluded from participating in Pension Plan. Taxpayer has adopted a resolution to terminate Pension Plan effective September 30, 2021, and it expects the termination process to be completed during 2022.

Pension Plan will have excess assets remaining in its trust after it satisfies all of its liabilities to its participants and their beneficiaries. The resolution terminating Pension

Plan has authorized the transfer of all or a portion of these excess assets of Pension Plan to a qualified replacement plan under section 4980(d)(2).

Taxpayer sponsors Plan 1, Plan 2, and Plan 3 (collectively, the receiving plans). The receiving plans are defined contribution plans designed to be tax-qualified under section 401(a). Plan 3 is also intended to be a tax-qualified plan under section 1081.01(a) of the Puerto Rico Internal Revenue Code of 2011 (PR Code). The active participants in Pension Plan who are residents of Puerto Rico also are participants in Plan 3. All participants in Plan 3 are residents of Puerto Rico.

Taxpayer proposes to transfer a portion of the excess assets from Pension Plan to the receiving plans. The amount to be transferred to each of the receiving plans will be based upon the projected future funding obligations for nonelective employer contributions (or other types of permissible employer contributions under section 4980(d)(2) of the Code) in each of the receiving plans. Taxpayer will place the entire amount of excess assets transferred to each receiving plan in a suspense account, and then allocate assets from the suspense account to the participants' accounts no less rapidly than ratably over the seven-plan year period beginning with the plan year of the transfer. The total amount of excess Pension Plan assets that will be transferred to the receiving plans will exceed 25 percent of the total amount of excess assets under Pension Plan. Each active participant of Pension Plan is an active participant in one of the receiving plans. Plan 1, Plan 2, and Plan 3 each has less than 95 percent of the active participants of Pension Plan, but collectively they have at least 95 percent of the active participants of Pension Plan.

The terms of the receiving plans will be amended to provide for the creation of a suspense account and a minimum allocation of assets from the suspense account for each plan year over a seven-plan year allocation period in an amount equal to a ratable portion of the assets in the suspense account at the beginning of the plan year. However, for the plan year that includes the initial transfer of excess assets from Pension Plan, the ratable portion allocation will be based on the amount of the excess assets transferred to the receiving plan as of the date of the transfer.

The ratable portion to be allocated from the suspense account for each plan year will be a fraction, the numerator of which is one, and denominator of which is the number of plan years remaining in the seven-plan year allocation period (including the then current plan year). Thus, the ratable portion allocation will be 1/7 for the plan year of the transfer. Thereafter, it will be 1/6, 1/5, etc. for each succeeding plan year, until all assets in the suspense account are fully allocated. These allocations are considered the required minimum allocations.

The required minimum allocations for each plan year will be used to provide nonelective and other permissible employer contributions under each receiving plan for each plan year in the seven-plan year allocation period. However, for the plan year that includes

the initial transfer of excess assets from Pension Plan, the amount of nonelective and other permissible employer contributions that will be funded from the suspense account will be limited to the difference between (1) the receiving plan's obligations to provide nonelective and other permissible employer contributions for the entire plan year, and (2) any amount of that funding obligation that was paid by Taxpayer to the receiving plan prior to the date of the transfer of the excess assets. Nevertheless, in the initial plan year that includes the transfer of the excess assets from Pension Plan, an allocation will be made to the participants' accounts in each of the receiving plans that is not less than the amount necessary to satisfy the required minimum allocation for that plan year.

Based on the current designs of the receiving plans and the current levels of nonelective and other permissible employer contributions under the receiving plans, if an amount is transferred to each of the receiving plans that is approximately seven times the current level of nonelective and other permissible employer contributions, it can be reasonably be expected that the required minimum allocations from the suspense account in each of the receiving plans will be used to fund nonelective and other permissible employer contributions for each plan year over the seven-plan year allocation period. However, if any additional allocations will be required because of the required minimum allocation requirement, those additional allocations will be provided to employees as a nonelective employer contribution, using an allocation method that is intended to satisfy the requirements of section 401(a), including sections 401(a)(4) and 415. The terms of each of the receiving plans will also address the limitations of section 415, as is required under section 4980(d)(2)(C). It also may become necessary to modify or limit the allocations of employer contributions to satisfy nondiscrimination testing requirements under either section 401(a)(4) or 410(b). Plan 3 also will need to consider the requirements of section 1081.01(a) of the PR Code.

Taxpayer also will reserve the right to amend the terms of each of the receiving plans, including the terms that relate to the employer contribution formulas for all employees covered by the receiving plans. However, in each plan year, no less than the amount of the required minimum allocation will be allocated from the suspense account to participants as a nonelective or other permissible employer contribution.

In order to treat the receiving plans as one qualified replacement plan, the aggregate amount of excess pension plan assets that will be transferred to the receiving plans will need to be allocated among the receiving plans. The allocation to each of the receiving plans will be based on the projected future funding obligations for nonelective or other permissible employer contributions for each of the receiving plans, over the seven-plan year allocation period.

Rulings Requested

1. The receiving plans may be treated as one plan for purposes of section 4980 of the Code pursuant to section 4980(d)(5)(D), and together constitute a single qualified replacement plan for purposes of section 4980(d)(2).

2. The direct transfers from Pension Plan to the receiving plans of a selected transfer amount that is in excess of 25 percent of the maximum amount that Taxpayer could receive as an employer reversion from Pension Plan will be treated as follows:

   a. The aggregate amount transferred will not be included in the gross income of Taxpayer;

   b. No deduction will be allowable with respect to the aggregate amount transferred; and

   c. The aggregate amount transferred will not be treated as an employer reversion for purposes of section 4980, and Taxpayer will not be subject to excise tax under section 4980 with respect to the amount transferred.

3. An allocation of the excess assets that is made to each of the receiving plans that is based on the projected future funding obligations of each of the receiving plans for nonelective or other permissible employer contributions over the seven-plan year allocation period, is consistent with the treatment of the receiving plans as a single qualified replacement plan for purposes of satisfying the requirements of section 4980(d)(2).

4. The crediting of the amounts transferred from Pension Plan to suspense accounts in the receiving plans, and the allocation of the assets in the suspense accounts to fund all or a portion of the nonelective or other permissible employer contributions due in accordance with the terms of each of the receiving plans, will satisfy the allocation requirement of section 4980(d)(2)(C). More specifically, the minimum ratable portion drawdown of the suspense account for each of the receiving plans over the seven-plan year allocation period as a nonelective or other permissible employer contribution for each interval (for example, for each plan year) will be no less than the amount determined by multiplying the amount in the respective suspense account as of the first day of the interval by a fraction, the numerator of which is one and the denominator of which is the number of the intervals remaining in the allocation period for each of the receiving plans, and will be calculated at least annually. The allocation of any income earned by the suspense accounts will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure.

Applicable Law

Section 4980(a) provides for a 20 percent excise tax on the amount of any reversion from a qualified plan.

Section 4980(c)(2) generally defines the term “employer reversion” as 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(d)(1) provides, in pertinent part, that the excise tax under section 4980(a) shall be increased to 50 percent with respect to any employer reversion from a qualified plan unless the employer either establishes or maintains a qualified replacement plan, or the plan provides for certain benefit increases which take effect immediately on the termination date.

Section 4980(d)(2) provides that a qualified replacement plan is a qualified plan established or maintained by the employer in connection with a qualified plan termination, which satisfies the participation, asset transfer, and allocation requirements of section 4980(d)(2)(A), (B), and (C).

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan.

Section 4980(d)(2)(B) requires that a direct transfer from the terminated plan to the replacement plan be made before any employer reversion, and that the transfer be an amount equal to the excess (if any) of (i) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d), over (ii) the amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment adopted during the 60-day period ending on the date of termination of the qualified plan, and which takes effect immediately on the termination date.

Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from a terminated plan, such amount is not includible in the gross income of the employer, no deduction is allowable with respect to such transfer, and the transfer is not treated as an employer reversion for purposes of section 4980.

Section 4980(d)(2)(C)(i) provides that, if the replacement plan is a defined contribution plan, the amount transferred to the replacement plan must be (I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or (II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the seven-plan-year period beginning with the year of the transfer.

Section 4980(d)(2)(C)(ii) provides that if, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the seven-plan-year period, such amount shall be

allocated to the accounts of other participants, and if any portion of such amount may not be allocated to other participants by reason of any such limitation, it shall be allocated to the participant as provided in section 415.

Section 4980(d)(2)(C)(iii) provides that any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

Section 4980(d)(2)(C)(iv) provides that if any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan, (I) such amount shall be allocated to the accounts of the participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and (II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which section 4980 applies.

Section 4980(d)(5)(D)(i) authorizes the Secretary of the Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan.

Revenue Ruling 2003-85, 2003-32 IRB 291 (Rev. Rul. 2003-85), provides that in accordance with section 4980(d)(2)(B)(iii), the direct transfer of an amount that is at least 25 percent of the maximum amount that the employer could receive as an employer reversion from a terminated plan and that was transferred to a qualified replacement plan is not includible in the employer's gross income. In addition, the Internal Revenue Service held that no deduction was allowable with respect to the amount transferred, and the amount transferred was not treated as an employer reversion. Further, the Internal Revenue Service concluded that the amount that the employer received was subject to the 20 percent excise tax under section 4980(a) and was includible in income under section 61.

Under section 501(a), an organization described in section 401(a) (that is, a trust which is part of a qualified pension, profit-sharing or stock bonus plan) is generally exempt from taxation.

Analysis

With regard to the first request, section 4980(d)(5)(D)(i) authorizes the Secretary of the Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan. In this case, Taxpayer proposes to contribute more than 25 percent of the excess Pension Plan assets to Plan 1, Plan 2, and Plan 3, all of which are ongoing defined contribution plans that include all of the active Pension

Plan participants. Plan 1, Plan 2, and Plan 3 may be treated as one single qualified replacement plan for purposes of section 4980(d)(2).

With regard to the second request, section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from a terminated plan, that amount is not includible in the gross income of the employer, no deduction is allowable with respect to the transfer, and the transfer is not treated as an employer reversion for purposes of section 4980. In this case, Pension Plan will transfer more than 25 percent of the excess Pension Plan assets that would otherwise be a reversion to Taxpayer to Plan 1, Plan 2, and Plan 3, considered collectively to be a qualified replacement plan. Therefore, the direct transfers from Pension Plan to the receiving plans of a selected transfer amount that is in excess of 25 percent of the maximum amount that Taxpayer could receive as an employer reversion from Pension Plan will not be included in the gross income of Taxpayer, no deduction will be allowable with respect to the aggregate amount transferred, and the aggregate amount transferred will not be treated as an employer reversion for purposes of section 4980. As a result, Taxpayer will not be subject to excise tax under section 4980 with respect to the amount transferred.

With regard to the third request, the allocation of the excess Pension Plan assets is based on a determination of the amount of funding for nonelective and other permissible employer contributions for participants of the receiving plans that include all of the remaining active Pension Plan participants. In addition, Taxpayer has demonstrated that its method of determining the allocated amount is reasonable, taking into account the participants from Pension Plan in each of the receiving plans. This allocation of the excess Pension Plan assets is consistent with the treatment of the receiving plans as a single qualified replacement plan for the purposes of satisfying the requirements of section 4980(d)(2).

With regard to the fourth request, Taxpayer states that the terms of the receiving plans will be amended to provide for the creation of a suspense account and a minimum allocation of assets from the suspense account for each plan year over a seven-plan year allocation period in an amount equal to a ratable portion of the assets in the suspense account at the beginning of the plan year. The ratable portion allocation will be 1/7 of the suspense account's assets for the plan year of the transfer. For each succeeding plan year, the denominator in the ratable portion allocation fraction will decrease by 1, until all assets in the suspense account are fully allocated in the 7th year. This method of allocation complies with the requirements of section 4980(d)(2)(C)(i). Therefore, in this case, this method of crediting of the amounts transferred from Pension Plan to suspense accounts in each of the receiving plans, and this method of allocation of the assets in the suspense accounts to fund all or a portion of the nonelective or other permissible employer contributions due in accordance with the terms of each of the receiving plans, will satisfy the allocation requirement of section 4980(d)(2)(C).

The rulings contained in this letter are based upon information and representations submitted by your authorized representatives and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2022-1, 2022-1 IRB 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and that 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. 2022-1, section 11.05.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 each of your authorized representatives.

Sincerely,

Ronald J. Rutherford-Triche
Chief, Qualified Plans Branch 2
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: